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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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MARK SULLIVAN,

Plaintiff,

vs. Case No. 2:23-CV-03174

ANIL MAKHIJA, et al.,

Defendants.

~~~~~

Video Deposition of
MARK SULLIVAN

April 1, 2025
10:08 a.m.

Taken at:
Frank J. Lausche State Office Building
615 W. Superior Avenue
Cleveland, Ohio

Tracy Morse, RPR

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13 ~ ~ ~ ~ ~

14 ALSO PRESENT:

15 Anne Schira, Esq.
16 Ivan Bercian, Videographer

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1 VIDEOGRAPHER: We're now on the
2 record. Today's date is April 1, 2025. The
3 time is approximately 10:08 a.m. This is the
4 videotape deposition of Mark Sullivan in the
5 matter of Mark Sullivan versus The Ohio State
6 University, et al., case number 2:23-CV-03174,
7 in the United States District Court for the
8 Southern District of Ohio, Eastern Division.

9 Will counsel please state their names for
10 the record.

11 MR. STOUFFER: David -- I'm sorry.
12 Dan, you first.

13 MR. PETROV: Either way.

14 Dan Petrov here on behalf of Mark
15 Sullivan and I'm with Sarah Wyss, who's not on
16 microphone, Sarah Wyss, also here for plaintiff
17 Mark Sullivan.

18 MR. STOUFFER: And then David
19 Stouffer and In Son Loving for defendant, The
20 Ohio State University, and the individual
21 defendants.

22 MARK SULLIVAN, of lawful age, called for
23 examination, as provided by the Federal Rules
24 of Civil Procedure, being by me first duly
25 sworn, as hereinafter certified, deposed and

1 said as follows:

2 EXAMINATION OF MARK SULLIVAN

3 BY MR. STOUFFER:

4 Q. All right. Mr. Sullivan, nice to
5 meet you. My name is David Stouffer. I'm with
6 the AG's office. I just kind of want to go
7 through some background rules and --

8 A. Sure.

9 Q. -- what we'll do here. So can you
10 spell your last name?

11 A. S-u-l-l-i-v-a-n.

12 Q. Okay. And you understand I'll be
13 asking you questions today?

14 A. Yes.

15 Q. And your answers will be under
16 oath?

17 A. Yes.

18 Q. And this deposition is being video
19 recorded and also recorded by the court
20 reporter. Both of these items will be made
21 part of the public record if we go forward with
22 dispositive motions. Do you understand that?

23 A. Yes.

24 Can I ask a question?

25 Q. Sure.

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1 A. This is the first time I'm doing
2 this. I was curious what it means to be under
3 oath. I don't have a legal background or
4 anything, so I don't know what it means.

5 MR. PETROV: And you'll
6 understand -- maybe I can --

7 MR. STOUFFER: Yeah.

8 MR. PETROV: Tracy gave you the
9 oath --

10 THE WITNESS: Yes.

11 MR. PETROV: -- he's just asking
12 you, did you understand that she gave you an
13 oath --

14 THE WITNESS: Okay.

15 MR. PETROV: -- to testify
16 consistent with her instructions and you did,
17 so.

18 THE WITNESS: Thank you.

19 BY MR. STOUFFER:

20 Q. And it just means that you're
21 testifying truthfully and penalty of perjury
22 applies --

23 A. Sure.

24 Q. -- which is all it means, as if
25 you're in a courtroom but obviously there's no

1 judge here.

2 A. Yes, yes.

3 Q. You know, one of the most important
4 things I like to emphasize is that, when I'm
5 asking a question or you're answering, we not
6 interrupt each other. So that way there's a
7 clean transcript. I think most attorneys have
8 been yelled at at least once by a court
9 reporter for talking over each other. It makes
10 the court reporter's job a bit more difficult.
11 So to the extent possible, let's try not to
12 speak over each other.

13 A. Sure.

14 Q. I would ask that you please wait
15 for my full question before answering. This is
16 because even in a normal conversation, it might
17 feel natural to answer a question before it's
18 finished, because you know where it's going,
19 but I'd just ask that you wait for my question
20 to be complete before you answer. If you don't
21 understand a question, you can always ask --
22 you can ask me to clarify or rephrase. So I'm
23 happy to rephrase if necessary. So, also, we
24 do have a breakout room for you, as I mentioned
25 before we went on the record. So I try to

1 insert breaks every 90 to 120 minutes. But if
2 you need a break or one of your counsel needs a
3 break beforehand, I give them out freely so
4 that's fine. The only thing I'd ask is that if
5 there's a question pending or if we're not at a
6 natural stopping point that we kind of keep the
7 question going.

8 A. Sure.

9 Q. From time to time, I assume that
10 your counsel will object to my question.
11 Unless he specifically instructs you not to
12 answer, you will still need to answer my
13 question.

14 And then, is there any reason that you're
15 not able to provide complete, accurate and
16 truthful testimony today?

17 A. No.

18 Q. Okay. And I'm going to just ask
19 briefly about medical information. So are you
20 taking any medication currently?

21 A. I'm a diabetic, Type II, so I take
22 a normal regimen for someone with Type II
23 diabetes.

24 Q. Does that affect your memory at
25 all?

1 A. No.

2 Q. Okay. Do you have any other mental
3 or physical conditions that inhibit your
4 memory?

5 A. No.

6 Q. Okay. And without discussing any
7 conversations with your counsel, what did you
8 do to prepare for today's deposition?

9 A. Read a series of documents,
10 reflected on potential areas of inquiry.

11 Q. Do you remember which documents
12 those were?

13 A. Yes, I do.

14 Q. Which ones were those?

15 A. The apology document, the Professor
16 Turner document where she was charged by a
17 student for her -- for her behavior as well as
18 description of mine. A -- I read a series of
19 documents that I had submitted to my counsel,
20 like the nominating letter document for
21 distinguished teaching and all eleven of the
22 letters of support or recommendation. And
23 there were a couple of others. If you mention
24 them, I would be able to confirm, yea, or, nay.

25 Q. And so those are the only documents

1 you recall at this point reviewing?

2 A. Yeah. I mean, there were -- yes.

3 Q. Okay. And then other than your
4 attorney, did you speak to anyone about this
5 deposition in preparing for it?

6 A. Just my wife --

7 Q. Okay.

8 A. -- and on a very high level my
9 three sons.

10 Q. And have you ever been a plaintiff
11 or defendant in a civil action, other than this
12 current action?

13 A. No.

14 Q. Okay. And then, have you ever
15 testified under oath before in any sort of
16 legal proceeding?

17 A. No. Prepared to do so on behalf of
18 the Attorney General's Office for a different
19 faculty transaction --

20 Q. And which one --

21 A. -- but that was --

22 Q. I'm sorry.

23 A. -- but they took me off the list at
24 the last minute.

25 Q. Does that mean you were prepared --

1 you were being prepared to testify but --

2 A. Yes.

3 Q. -- but you didn't go forward with
4 testifying?

5 A. Right, working on behalf of the
6 AG's office.

7 Q. And which matter was that; do you
8 recall?

9 A. It was a matter regarding a faculty
10 member that was also in the executive ed arena
11 and who was being released for some -- some
12 like selling of client leads.

13 Q. Oh, I see. You said, "Executive
14 ed." Can you just explain for the record what
15 you mean by that?

16 A. Sure. So there's roughly 200
17 faculty members on staff in various capacities
18 at OSU Fisher College of Business. And a very
19 small percentage of them, about 1 percent, are
20 invited to teach varied content to midlevel and
21 executives in industry --

22 Q. Okay.

23 A. -- and so it's a premium kind of
24 area that the college likes to -- the business
25 school likes to put what they consider their

1 best professors into that position of facing
2 what you might say, high margin customers.

3 Q. Um-hum. And so there was a
4 professor involved in that program --

5 A. Right --

6 Q. -- selling leads?

7 A. -- right. Had a private consulting
8 business and was recruiting exec ed students to
9 participate in her private non-Fisher business.

10 Q. And do you recall the professor's
11 name?

12 A. No, I don't.

13 Q. Okay.

14 A. This was a number of years ago.

15 Q. Okay. Approximately how many years
16 ago? Or do you remember the year?

17 A. You know, maybe five -- I'm just
18 guesstimating, five or six years ago.

19 Q. Okay. Other than moving
20 violations, have you ever been indicted,
21 convicted or ever pled guilty to any
22 criminal --

23 A. No.

24 Q. -- counts?

25 MR. PETROV: Objection.

1 You can answer. You can answer.

2 THE WITNESS: Okay.

3 A. No.

4 Q. No. Okay. Have you ever filed any
5 internal complaint alleging a violation of a
6 legal right of one of your former employers?

7 A. No.

8 Q. Have you ever filed any
9 administrative charges, discrimination at any
10 former employer?

11 A. No.

12 Q. And then have you ever filed for
13 bankruptcy?

14 A. No.

15 Q. And then have you ever been
16 involved in a divorce proceeding?

17 A. No.

18 Q. Okay. I'm going to hand you my
19 first exhibit.

20 A. By the way, that's the best thing
21 going in my life.

22 Q. Congratulations. How long?

23 A. Twenty-nine years.

24 Q. Oh, congratulations.

25 A. Thanks.

1 - - - - -

2 (Thereupon, Deposition Exhibit 1,
3 Resume of Mark J. Sullivan Ph.D.,
4 was marked for purposes of
5 identification.)

6 - - - - -

7 Q. All right. I'm going to hand you
8 what is marked Defendant's Exhibit 1.

9 MR. STOUFFER: (Handing.)

10 MR. PETROV: Thanks.

11 MR. STOUFFER: I apologize. I
12 unfortunately only have one copy.

13 MR. PETROV: We can share.

14 MR. STOUFFER: You can share.

15 BY MR. STOUFFER:

16 Q. All right. Just take a moment to
17 review the document and let me know when you're
18 done.

19 A. I'm done, David.

20 Q. Okay. Do you recognize Exhibit 1?

21 A. Yes, I do.

22 Q. And what is it?

23 A. My resume.

24 Q. Is this the same resume you turned
25 over in discovery?

1 A. I varied -- I have a number of
2 variations, so I'm not sure.

3 Q. Okay. And did you create
4 Exhibit 1?

5 A. Yes, yeah.

6 Q. Okay. I'm going to start with your
7 education, so if you go to, I believe it's the
8 third page. So do you see kind of near the
9 bottom of the third page it says, "Education"?

10 A. Okay.

11 Q. And you attended Case Western
12 University for your Ph.D.?

13 A. Yes.

14 Q. And what degree did you receive
15 from Case Western?

16 A. So from Case, Weatherhead, it
17 was -- Weatherhead School of Management, it was
18 a Ph.D. in organizational behavior.

19 Q. Okay. And then how long did that
20 program take you?

21 A. For me it took six years full-time.

22 Q. And then what year did you
23 graduate?

24 A. In '97.

25 Q. And then what was the prior -- and

1 then going down to, Harvard University --

2 A. Right.

3 Q. -- did you attend Harvard?

4 A. So that was a joint degree program
5 out of Harvard School of Education and School
6 of Business and it was referred to as, a
7 master's in organizational development.

8 Q. Okay. And when did you graduate?

9 A. 1980.

10 Q. And about how long were you there?

11 A. That was a one-year program.

12 Q. One-year program?

13 A. Yeah.

14 Q. Okay. And then going down to --
15 And is it Fitchburg?

16 A. Yes.

17 Q. -- Fitchburg State University.

18 A. Yes.

19 Q. When did you attend Fitchburg State
20 University?

21 A. 1972 to '76.

22 Q. '76. And then what degree did you
23 receive?

24 A. It was a bachelor's degree with a
25 major in special education.

1 Q. Okay. Did you at any time after
2 attending Fitchburg go on to teach or have a
3 career in primary or secondary education?

4 A. Yes.

5 Q. For how long and what years?

6 A. So that was first year out of
7 college, so. I graduated in 1976. And so that
8 following year, I taught intercity high school
9 special ed for what was labeled -- the label
10 then was with emotionally -- they referred to
11 it as, emotionally disturbed and learning
12 disabled intercity high school students.

13 Q. And how long were you there?

14 A. Just for that first year.

15 Q. And then is that when you -- then
16 you left to go into -- and we'll get to this a
17 little later, but is that when you went to
18 United Airlines?

19 A. I worked for a family business,
20 manufacturing concern and then went from -- and
21 my role was to oversee sales personnel and
22 sales development training and --

23 Q. And what was -- oh, sorry.

24 A. -- and that was with Wright Line, a
25 family business in Worcester, Mass, which given

1 how many years -- I'm older so I -- you know,
2 there was one or two pieces of employment that
3 I left out just because it was getting too
4 long.

5 Q. That's totally fine. That's why
6 I'm asking you.

7 A. Yeah, yeah. But that was -- it was
8 a great experience. And out of that I had
9 United Airlines come to me and ask me to work
10 for them --

11 Q. Okay.

12 A. -- in the same capacity, so that
13 was in sales training.

14 Q. Okay. And you said, "A family
15 business." Does that mean you're originally
16 from Massachusetts?

17 A. Yes, yes --

18 Q. Okay.

19 A. -- it does.

20 Q. All right. And then I'm going to
21 go -- I'm going to go kind of from most recent
22 to most distant for your work history. So
23 starting with Apex. What is Apex?

24 A. So Accelerated Performance
25 Excellence, a small consulting business that

1 focused on organizational development issues.
2 So training, coaching, working with hierarchies
3 like, say, the Attorney General Office and
4 looking at things like decision rights and how
5 to create clear processes and handoffs and so
6 on.

7 Q. And on your resume it says,
8 "Managing director." Is that the position you
9 held the entire time?

10 A. Yes.

11 Q. And is this a consulting firm that
12 you started?

13 A. Yes --

14 Q. Okay.

15 A. -- it is --

16 Q. Okay.

17 A. -- I worked with a couple of other
18 people, though, but --

19 Q. Did you have any employees?

20 A. So they were all contractors.

21 Q. Oh, all contractors. Okay. And
22 then how much money did you make in the two
23 years -- in each of the two years you were
24 there?

25 MR. PETROV: Objection.

1 But you can answer.

2 THE WITNESS: Okay.

3 A. So it was roughly \$50,000 in one --
4 I think in total maybe \$100,000.

5 Q. So \$50,000 the first year and
6 then \$50,000 the second year?

7 A. I think so. Don't quote me. I'd
8 rather say nothing if I don't know exactly but
9 I was --

10 Q. It's okay if it's an approximation.

11 A. Yeah, yeah.

12 Q. Okay. And then we'll get to the
13 employment after that later. But going back
14 again to Battelle Memorial --

15 A. Yeah.

16 Q. -- Institute. When did you work
17 there?

18 A. So from 2007 to 2013.

19 Q. And were you hired on as a chief
20 talent officer?

21 A. Yes.

22 Q. And you stayed in that position?

23 A. Yes. Well, I was -- I got an
24 upgraded position. I was hired as a vice
25 president and then became senior vice president

1 overseeing different capacities like DEI,
2 talent training, development, executive
3 development and so on --

4 Q. Okay.

5 A. -- performance management, you
6 know, how you -- so those were some of the many
7 categories.

8 Q. Okay. And then how long were you
9 there?

10 A. From 2007 to 2013.

11 Q. Okay. And then why did you leave
12 to go on to Apex?

13 A. There was a change of leadership
14 and I felt it was more opportunistic at that
15 time to move on to a private consulting
16 business.

17 Q. Did you resign or were you
18 separated from employment involuntarily?

19 A. I was separated.

20 Q. Okay. Who was your supervisor
21 during -- or supervisors, I should say,
22 during --

23 A. Yeah.

24 Q. -- your time there?

25 A. So it was executive vice president

1 Tom -- I can't think of his last name now. It
2 was a number of years ago -- Tom Snowberger.

3 Q. And he was a senior vice president?

4 A. He was, I think the executive vice
5 president.

6 Q. Executive vice president. Did they
7 give you any reasons as to the separation?

8 A. Just that we had different
9 perspectives on management philosophies and
10 perspectives.

11 Q. Anything specifically with --

12 A. No.

13 Q. -- regards to management
14 philosophy?

15 A. Well, just that I believe in more
16 investment in training and development and
17 there was some cutting back. It was during a
18 time when the government was in contraction
19 mode. And Battelle has about 90 percent of
20 their business in the government, so they had
21 to cut back --

22 Q. Okay. And that was --

23 A. -- and they did not -- they closed
24 that position amongst a number of leadership
25 positions.

1 Q. And are these reasons for your
2 separation what you were told or what you just
3 suspect?

4 A. What I was told.

5 Q. Okay. And then before Battelle, it
6 looks like you worked for Honeywell
7 International, correct?

8 A. Right.

9 Q. What can you tell me about your
10 time there?

11 A. That was -- so I oversaw strategy
12 and executive and workforce training and
13 development and leadership development and
14 oversaw the learning technology area --

15 Q. And then --

16 A. -- and that was for -- that was on
17 an enterprise level, so.

18 Q. And you were employed at Honeywell
19 from 2001 to 2007?

20 A. Yes.

21 Q. Okay. Why did you leave Honeywell?

22 A. So that was a time that was -- I
23 was just very much looking for something new
24 and different in my career. I was really -- I
25 was also personally concerned about my --

1 there's a personal matter. My wife's mom was
2 of failing health and we wanted to get back to
3 Ohio --

4 Q. Okay.

5 A. -- so -- so that was a big
6 motivator. And it was very -- Battelle was
7 very quick to hire me, when they knew that I
8 was interested in them.

9 Q. Okay. So does that mean it was a
10 voluntary resignation?

11 A. Yeah.

12 Q. Okay. And before Honeywell, it
13 looks like from 1997 to 2002, you worked at
14 Accenture.

15 A. Yes.

16 Q. And then what can you tell me about
17 the position you had there?

18 A. So that was also voluntary. It was
19 after 9/11. We had 800 consultants out of the
20 Denver office, you know, a typical large legacy
21 consulting house. And I had to let go
22 about 150 of my own consultants. And there was
23 only 20 of us that were in leadership and I
24 knew at some point they'd be coming for us. So
25 I voluntarily left to go towards Honeywell,

1 which was also a more substantial opportunity.

2 Q. Did you take then like a severance
3 or a buyout?

4 A. Nothing. It was voluntary.

5 Q. A voluntary resignation?

6 A. Yeah.

7 Q. And then it looks like for a time
8 you worked at Case Western Reserve University,
9 Weatherhead Management School.

10 A. Right.

11 Q. What can you tell me about your
12 time there?

13 A. So I taught under -- in the
14 organizational behavior department as a
15 doctoral student for Dr. Richard Boyatzis,
16 foundations of management as well as taught in
17 the executive ed space as well. They were --
18 they came to me and asked if I could teach
19 negotiating skills and sales communications and
20 a few other -- I think like influence and power
21 workshops --

22 Q. Influence and power workshops --

23 A. -- and so -- and I also did some
24 volunteer work as a doctoral student in the
25 whole area of diversity. I ran diversity

1 workshops.

2 Q. Okay. It says that you were on the
3 executive MBA faculty.

4 A. Yeah.

5 Q. And is that when you were a
6 doctoral student?

7 A. Right, yes, yes, yeah. I was also
8 combining that -- you know, so I was being
9 trained as an organizational psychologist but
10 also -- during those six years but three years
11 in what was a post doc clinical training on
12 individual and team development --

13 Q. Okay.

14 A. -- and that was at Gestalt
15 Institute.

16 Q. I was going to ask you about that.

17 A. It focused on embracing and
18 constructively dealing with resistance and
19 tension at an individual and team level.

20 Q. Okay. So Gestalt Institute of
21 Cleveland, which is on the third page of the
22 resume under, "Education" --

23 A. Right.

24 Q. -- that's in connection with your
25 time at Case Western?

1 A. Yeah. There were a couple of us
2 that were admitted into that program while we
3 were doctoral students. Usually it's after
4 because it's a post doc --

5 Q. Um-hum.

6 A. -- but a couple of us were admitted
7 earlier.

8 Q. Okay. And prior to your time at
9 Case Western, you worked at United Airlines?

10 A. Yes.

11 Q. And what can you tell me about your
12 time there?

13 A. So I oversaw workforce development,
14 leadership development, strategy, business
15 strategy with executives, and those sorts of
16 things. And that was globally, so I did a lot
17 of travel around the world. It was for -- my
18 charge was to work to development capacity,
19 individual and team business capacity
20 for 225,000 students -- I mean, employees.

21 Q. Okay. And then did you leave your
22 employment at United Airlines voluntarily?

23 A. Yeah.

24 Q. Okay.

25 A. Actually, they gave me what was a

1 five-year educational leave of absence -- the
2 first time they had ever done that in their
3 history -- so that I could go off and take this
4 Ph.D. program at Case. So I was living and
5 working for United Airlines in Chicago -- or
6 based out of Chicago --

7 Q. Um-hum.

8 A. -- and then I voluntarily asked to
9 take an extended leave of absence, which
10 usually would be for just one year. They made
11 an exception with me. And it was on the
12 premise that I would be quarterly connected to
13 them with a workshop. They would fly me back
14 and I would do a workshop. They would give me
15 some free travel and support me in a number of
16 other ways while being a doctoral student.

17 Q. Okay. So can you explain, though,
18 why the employment dates end at United Airlines
19 in 1991, if you were kept on? Because it looks
20 like -- and correct me if I'm wrong.

21 A. Yeah.

22 Q. -- but it looks like you started at
23 Case Western Reserve University in '91 but by
24 United Airlines, your employment apparently
25 ended in '91.

1 A. Yeah, so I -- so officially I got
2 off active payroll in '91, but unofficially I
3 was -- we had a special arrangement that was
4 negotiated between them and me. They didn't
5 want to see me go, which is why they gave me a
6 five-year Ph.D. educational leave of absence.
7 And so I was -- I had this unofficial, kind of
8 what you might say, off the books association
9 where they would have me come back and I would
10 do some volunteer workshops, you know, in lieu
11 of the fact that they were giving me five years
12 off.

13 Q. You didn't return to United
14 Airlines --

15 A. Right.

16 Q. -- though, correct?

17 A. That's right. They wanted me to
18 and I was interested. They were good people.
19 We had a great relationship. But Accenture had
20 a better offer. And I was newly wed at the
21 time and looking to maybe start a family and
22 buy a house and so on and Accenture had a
23 better offer.

24 Q. That makes sense. Is Defendants
25 Exhibit 1 a true and accurate copy of your

1 resume?

2 A. Yes.

3 Q. Okay. I want to now jump forward
4 in time and go to your time at the Performance
5 Learning Academy in Cleveland.

6 A. Right.

7 Q. What can you tell me about that
8 position?

9 A. It's a startup business focusing on
10 executive coaching and keynote speaking
11 engagements. I plan on full-time launch within
12 this or next quarter. I've invested funds. So
13 I am already doing some executive coaching, but
14 I've been busy in the business development, BD,
15 side spending money developing a website and
16 developing leads and contacts, et cetera, so --

17 Q. Okay. And --

18 A. -- but I am -- there is some -- a
19 very small amount of recurring revenues coming
20 in from the executive coaching --

21 Q. Okay.

22 A. -- but I really don't know how much
23 money or revenues would come in from this.

24 Q. Do you have any employees or --

25 A. No, no. It's just me.

1 Q. And did you start -- and prior to
2 the Performance Learning Academy, you worked at
3 OSU, correct?

4 A. That's right.

5 Q. And so you didn't -- or did you
6 start the Performance Learning Academy during
7 or after your separation?

8 A. After my separation.

9 I also have reached out to other
10 executive ed programs embedded in other
11 universities, so --

12 Q. Okay.

13 A. -- so I met with different people
14 from the University of Michigan. I've --
15 George Mason and so on.

16 Q. Okay. So based on what you said a
17 little bit earlier, is it correct to say then
18 that you wouldn't be able to approximate your
19 income?

20 A. That's right.

21 Q. Okay. And then have you -- well,
22 we'll get to that. Okay. Let's talk about
23 your employment at OSU. So when did you start
24 working for OSU?

25 A. That was in -- it was about June or

1 so of -- where is it? -- 2015.

2 Q. Okay. Would that be August
3 of 2015?

4 A. Yeah, that sounds -- that sounds
5 about right.

6 Q. And then do you remember when --
7 well, first, what position did you hold at OSU?

8 A. My hiring manager Ben Tepper was
9 initially looking at a lecturer position.
10 After talking with me and hearing the thirty
11 years of industry and practitioner experience,
12 he raised it -- raised both the position title
13 and the income from a lecturer to a senior
14 lecturer and the income from 120 to like 150 or
15 so starting off.

16 Q. Okay. So you worked as a senior
17 lecturer?

18 A. That's right.

19 Q. And you were employed in the Fisher
20 College of Business?

21 A. Yes, but I did -- while under their
22 employment, I was asked to teach across the
23 university including the vice president of HR
24 of OSU hired me to teach all of their HR folks
25 in Crucial Conversations. They brought in 150

1 HR folks from across the state and made it
2 mandatory that they would go through my
3 training. So all of this content that we're
4 talking about was approved and paid for by --
5 by OSU HR for me to teach them.

6 And that's an example of one of the many
7 times that I was asked to teach outside of
8 the 18 colleges that make up the
9 university -- 18 colleges and schools that make
10 up the university. One of them happens to be
11 Fisher College of Business but I worked in
12 other colleges, businesses and also functions.
13 So HR function I worked in as a teacher for
14 them.

15 Q. So just kind of taking what you're
16 saying. So were you a senior lecturer assigned
17 to Fisher College of Business --

18 A. Yes.

19 Q. -- but you did visiting teaching in
20 other colleges and universities?

21 A. That's right, that's right.

22 Q. Okay.

23 MR. PETROV: Mark, you're going
24 to drive Tracy crazy. You're communicating in
25 a normal way in conversations, but the, That's

1 right's, or, Okay's, in the middle of David's
2 questions just make it hard for her because she
3 has to record every one of those. So to the
4 extent you can just let David finish his entire
5 question --

6 THE WITNESS: Thank you.

7 MR. PETROV: -- and then you give
8 your entire answer. It's a little more
9 rigorous than a regular conversation.

10 THE WITNESS: Yes, yes. Thank
11 you.

12 Sorry, David.

13 MR. STOUFFER: It's okay.

14 THE WITNESS: Thank you.

15 MR. PETROV: No. Thank you.

16 BY MR. STOUFFER:

17 Q. What were your duties as a senior
18 lecturer?

19 A. I was principally charged with
20 teaching a series of courses that involved
21 developing my own material and/or leveraging
22 licensed material. In this case, one-third of
23 the 15-week 40-hour Crucial Conversation class
24 was licensed material. So, for example, I was
25 under obligation under the license to teach,

1 how do you apologize, like that was -- so in a
2 crucial conversation, it's important to know
3 ways to deal with conflict and tension and
4 misunderstandings. And so I was required to
5 teach and show cases and examples of apologies,
6 and that was under the licensure agreement part
7 of my job as a senior lecturer.

8 Q. Okay. And I appreciate the
9 description but I have -- I admit, I forgot to
10 followup about the HR staff issue. So you said
11 earlier you taught HR staff Crucial
12 Conversations.

13 A. Yes, that's right.

14 Q. Do you remember when that took
15 place?

16 A. That was roughly -- it was before
17 the pandemic. So I'm now guesstimating that
18 it's 2018 or so --

19 Q. Okay.

20 A. -- it could be 2019 --

21 Q. And this was --

22 A. -- the vice president of HR over
23 all of OSU was my client.

24 Q. And this was the entirety of OSU's
25 HR staff?

1 A. Entirety. They felt it was that
2 important. They brought in roughly 150 HR
3 folks from all the campuses across the state.

4 Q. Okay. And then you said,
5 "Leveraging licensed material." Can you
6 explain that to me in simple terms?

7 A. Sure. So for the first 7 of 15
8 weeks or what would be roughly 18 of 40 hours,
9 I would teach someone else's content but in my
10 own way. I mean, so -- and I had to be
11 licensed. I was the -- at the time I was the
12 only one licensed at OSU to be able to teach
13 this material. And it was the only business
14 school in America that was giving three credits
15 for learning this material. So I had to teach
16 it according to the content as laid out by this
17 supplier. And then two-thirds of the
18 program -- or another third was around
19 executive presence and also leadership
20 resilience.

21 So, for an example, my content around
22 executive presence involved touching and space
23 management. You know, how do you fill the
24 space up and how do you do things such as show
25 affirmation and support by acknowledging

1 people's smiles, by touching them in three
2 places, if appropriate; appropriate touch,
3 which was on top of the hand, the arm wrist or
4 the top of the shoulder. And so teaching ways
5 to do that to show support or affirmation or,
6 I'm with you, was content that was in one-third
7 or, you know, there were like three pillars of
8 the course.

9 Q. Okay. And do you remember when you
10 interviewed for the senior lecturer position?

11 A. I do.

12 Q. When did that interview take place?

13 A. So that happened around the spring
14 of 2015, by Ben Tepper, my hiring manager, and
15 me. And he had heard about me and reached out
16 to me and asked, "Would you be willing to come
17 in and have a conversation about a position we
18 have open."

19 Q. Had you previously submitted any
20 sort of application or --

21 A. I had no idea what -- I had no
22 association with OSU, except one of two
23 meetings with the former dean who was
24 interested in my work at Battelle and wanted to
25 create a partnership between Battelle and OSU

1 Fisher College of Business. And since I was
2 running 100-day incubator leadership
3 development program there, she wanted in on
4 some part of that in some way. So that was the
5 only association I had with OSU.

6 Q. When you say, "Former dean," who
7 are you referring to?

8 A. It was a woman. I can't think of
9 her name. I just met her once or twice. She
10 came to my office, I came to her office, that
11 kind of thing, once or twice. That was around
12 the time period of like 2012 or 2011.

13 Q. Okay. I see. So in 2012, you met
14 the then dean --

15 A. Right. And that was --

16 Q. -- of Fisher?

17 A. -- and that was the only
18 association.

19 I'm sorry for interrupting.

20 Q. Yeah, as Dan said, it's actually
21 not even for our benefit. It's really for the
22 court reporter's benefit --

23 A. Yeah.

24 Q. -- and I do it, too --

25 A. Yeah.

1 Q. -- kind of fall into natural
2 conversational patterns.

3 So the person you're referring to, when
4 you said, "The prior dean," it was the dean of
5 the Fisher College of Business in or
6 around 2012?

7 A. Yes.

8 Q. Okay. And was anyone else in the
9 interview, between you and Ben Tepper?

10 A. No.

11 Q. And what was Ben Tepper's title at
12 the time, or position?

13 A. He was -- he was a department chair
14 for management and HR.

15 Q. And, Management and HR, that's a
16 department within the Fisher College of
17 Business?

18 A. That's right. It's one of
19 roughly -- they may have changed it, but there
20 was roughly six or seven departments in terms
21 of their organizational structure, and one of
22 them was the department of management and human
23 resources.

24 Q. Just for clarity and for the
25 record, if I were to refer to the, "MHR

1 department " --

2 A. Yes.

3 Q. -- would you understand that to
4 mean the management human resource department?

5 A. That's right.

6 Q. Okay.

7 MR. PETROV: Just, M-H-R?

8 MR. STOUFFER: M-H-R.

9 MR. PETROV: Got it.

10 MR. STOUFFER: Yeah, I've been
11 confusing that sometimes, too.

12 MR. PETROV: Well, you can pick
13 whatever you want. I just wanted to make sure
14 I heard you correctly. Got it.

15 MR. STOUFFER: Okay.

16 BY MR. STOUFFER:

17 Q. So is there anything that stuck out
18 to you or that you remember from your interview
19 with Ben Tepper?

20 MR. PETROV: Objection to form.

21 But you can answer if you can, Mike.

22 THE WITNESS: Sure.

23 A. What I remember was how excited he
24 was to potentially hire someone who was
25 considered within the industry and within his

1 and other circles as being a real expert in the
2 field. And he was particularly, I think
3 intrigued about certain experiences I have.
4 Like I worked with the State Department over --
5 when it was the Soviet Union, Moscow and
6 working in other places. So he knew I had
7 material experience in the field of human
8 resources management and talent -- talent
9 development.

10 Q. Okay. Do you remember Ben Tepper
11 going over any of the duties of the position
12 and describing the duties?

13 A. Yes. It was more in general terms.
14 He said, "We need someone who is creative and
15 disciplined that can create some programs here
16 that need a lot of attention, a lot of love."
17 It was -- and he went specifically -- there was
18 one program that was called The Global
19 Consulting Program. And he said, "We don't
20 have anyone here that could" -- have any
21 faculty that actually worked for a consulting
22 house that he knew of at the time.

23 And the fact that I worked for Accenture
24 and was in a leadership capacity there, he was
25 really excited, because I would take over a

1 program that was troubled. It was down to 20
2 students. Over a two-year period, I built it
3 up to 80 students. So, you know, he knew that
4 he was hiring someone who had previous
5 experience in these areas of management,
6 consulting, HR, you know, and talent
7 development.

8 Q. Did he describe what the focus of
9 the position would be? Like would it be
10 teaching or anything -- or what would be --
11 what was the focus of the position?

12 A. He said that, "We can't pay you
13 what you're really worth. You're taking quite
14 a pay cut but we will -- in return there's a
15 very select number of faculty that we invite
16 into the executive ed team. And you might be
17 able to make up some of that pay by working
18 across the university and outside with
19 companies like Honda," which I did, "and with
20 Nationwide," and so on.

21 So he provided scope boundaries. It
22 wasn't too definitive around daily roles and
23 responsibilities. He said, "You know, you
24 develop your own stuff," until we got to
25 talking about Crucial Conversations. And he

1 said, "Well, I've been trying to get that for
2 years in here." And I said, "Would you be
3 interested in me trying to bring that in," and
4 he said, "Yeah, that would be great."

5 So fast forward. So I was not developing
6 all the material in Crucial Conversations, but
7 I was definitely behind it especially around
8 the role of things like apologies and the power
9 of a good apology. And I also had shared with
10 him that I have other things that I would want
11 to bring in; and I just said, In general on a
12 high level around executive presence and about
13 leadership resilience, but that was just as an
14 aside. I did submit -- in order for the course
15 to be approved and accredited, I submitted
16 content around what I would do in executive
17 presence in terms of respectful touch and space
18 management and so on.

19 Q. Did Ben Tepper, during your
20 interview, go over any of the expectations or
21 standards that you would be needing to meet in
22 your role as a senior lecturer?

23 A. If you wouldn't mind giving me an
24 example of that.

25 Q. Did he say -- like did you have to

1 come in so many days a week? Would you have to
2 teach so many courses? How would your --

3 A. Sure.

4 Q. -- performance be tracked? Those
5 kind of things.

6 A. Okay. So he said --

7 MR. PETROV: So just --

8 THE WITNESS: Oh, go ahead.

9 MR. PETROV: -- you can answer
10 that question. I'm just pointing out for the
11 record, that was three questions you were given
12 and you can answer them if you followed them --

13 THE WITNESS: Thank you. Yeah.

14 MR. PETROV: So go ahead.

15 BY MR. STOUFFER:

16 A. So he had spoken to the course
17 load. And it turned out that while he had
18 initially stated that you'd be teaching five
19 classes, I taught as many -- I think one
20 semester I taught eight classes. I kind of
21 broke the record in terms of number of classes
22 amongst also volunteering to be an advisor to
23 the investment club and an advisor to the
24 consulting club, an advisor to a number of
25 other roles, so.

1 Q. Okay. So anything else he
2 discussed as far as standards and expectations,
3 outside of what you just mentioned?

4 A. No.

5 - - - - -

6 (Thereupon, Deposition Exhibit 2,
7 04/21/2015 Letter To Mark J.
8 Sullivan From Anil K. Makhija and
9 John W. Berry, Bates Numbers
10 OSU_000029-000030, was marked for
11 purposes of identification.)

12 - - - - -

13 Q. Okay. I'm going to give you what's
14 Defendant's Exhibit 2. Just take a moment to
15 look it over and let me know when you're done
16 reviewing.

17 A. Okay.

18 Q. Do you recognize Defendant's
19 Exhibit 2?

20 A. Vaguely. It's quite a while ago --

21 Q. And what is it?

22 A. -- but I do remember, there's a
23 little what might be viewed as a discrepancy,
24 so --

25 MR. PETROV: His question is, What

1 is Exhibit 2.

2 A. So this is an offer letter or
3 confirming of an offer.

4 Q. For what position? And to whom?

5 A. For senior lecturer for me.

6 Q. And is there a term of employment
7 in the letter?

8 A. So what are you --

9 Q. I'm asking: Is this position
10 that's being offered in this letter stating
11 that there's a term or a length of time for the
12 position?

13 A. Yeah, I know where you're going.

14 So it was a contract position but there
15 was -- within the interview hiring -- if you'd
16 permit me to go back and add one thing. He did
17 say that while it's a multiyear contract -- so
18 that's how they officially started you off,
19 with two years -- there was, We have a lot of
20 needs here and we would most likely -- as they
21 did with me, they had me set up to do many
22 courses beyond -- and teaching load beyond the
23 end of the contract.

24 So I might be signing a document that
25 says it starts and ends here but -- at a

1 certain place, but they were quite clear with
2 me that they needed me beyond what was official
3 on paper with all kinds of teaching course load
4 for the next fall and the next spring, so on.

5 Q. And looking at the second paragraph
6 in the letter, it looks like the second
7 sentence. Can you read that, please?

8 A. Yeah. So that's what I'm speaking
9 to. So as it says, "This is a non-tenure-track
10 appointment," blah-blah-blah, so it is -- what
11 it doesn't say here is that, we'll be in
12 trouble if you don't stick around beyond the
13 dates that are here.

14 Q. On the second page, can you confirm
15 that's your signature?

16 A. Yes, yeah.

17 Q. Then it appears there's a signature
18 of Anil Makhija, correct?

19 A. Yes.

20 Q. And that is one of the individual
21 defendants in this case, correct?

22 A. Yes, yes.

23 Q. Okay.

24 A. Only when it's appropriate, I have
25 one additional comment about this. I'm trying

1 to learn to not interrupt you.

2 Q. Does it relate to one of my
3 questions?

4 A. Your first question which --

5 Q. Okay. Go ahead.

6 A. So it says here in the first
7 paragraph, The annual salary of 130,000 for
8 nine months but what -- in the interview, what
9 Ben Tepper, my hiring manager, made clear was,
10 through executive ed, he could definitely offer
11 much more than that but that was -- but this
12 was the -- I mean, he was in a position of
13 trying to attract me to come to OSU. I was in
14 a position of having to do a pay cut. So he
15 kind of met me in the middle and was true to
16 his word in that regard, in terms of getting me
17 on executive ed and making more money.

18 Q. Okay. But the letter does
19 say, 130 --

20 A. Right.

21 Q. -- is that what you were paid for
22 your nine months -- or in the nine-month
23 period?

24 A. Yeah. If you look at it, you'll
25 see that I was paid a higher rate than that,

1 because they included the executive ed pay in
2 the overall income. So I guess you can say,
3 yes, and then some.

4 Q. Was executive ed, you said, the
5 executive education program?

6 A. Yes.

7 Q. Were you compensated separately for
8 that then?

9 A. No. It was merged in. So as part
10 of my STERS compensation, I was -- it was
11 treated as part of my overall earnings
12 potential. So I had my regular teaching
13 salary, which would be represented by whatever
14 the contractual term was for that period of
15 time, but was folded into that from a STERS
16 standpoint was the exec ed. And that was a
17 material difference because I would have an
18 increased pension based on the executive ed.

19 Q. Okay. And did you start in that
20 program when you were first hired on then?

21 A. Yes.

22 Q. Okay. And then did you stay in
23 that program the entirety of your time at OSU?

24 A. No.

25 Q. When did you stop participating in

1 that program?

2 A. When they told me I could no longer
3 participate in it, which was the last year. I
4 mean, there were people that wanted me to
5 continue to teach in executive ed. What I was
6 teaching was popular and yet the new director
7 of exec ed said she was told that she could no
8 longer hire me because of my -- because of this
9 situation.

10 Q. So when did this conversation take
11 place?

12 A. With the director of exec ed?

13 Q. Yes.

14 A. It was near the end of my
15 termination.

16 Q. So is that 2022, 2021? When did
17 this happen?

18 A. It was somewhere between then. So
19 it was my last year. It was, I would say,
20 probably winter, early spring of 2022. I left
21 May 14 of 2022, was my last day of being on OSU
22 employment, payroll.

23 Q. So with the executive ed program,
24 does that mean that you weren't able to
25 participate that spring semester?

1 A. Right. And also, I was looking at
2 future. One of their major clients, Honda, was
3 very interested in me teaching in a bigger way
4 and even on campus in Marysville and they said,
5 no, they couldn't do that.

6 Q. What was the name of the director
7 who told you this?

8 A. I'm not sure who -- who it was at
9 the time, but it was a new director. So she
10 probably -- I would imagine you could find out.

11 Q. But it was a woman, though?

12 A. Yes.

13 Q. Okay. And was this conversation
14 verbal or in writing?

15 A. It was verbal.

16 Q. Verbal.

17 A. And she, you know, basically said,
18 I've been told that I can't hire you anymore --
19 you can't do any more exec ed.

20 Q. And was there anyone else in the
21 room, when this conversation happened?

22 A. No. It was just the two of us.
23 But I did also mention it to Ben Tepper; that,
24 is it correct, my understanding, that I can no
25 longer do exec ed? And he said, quote -- I'm

1 speculating this is exactly what he said, but
2 it was something to the effect of, Yeah,
3 something like that. I'm not exactly sure, but
4 probably.

5 Q. When you say you're speculating, do
6 you mean that you don't --

7 A. I can't say the exact words, but
8 those are pretty close to his words. Ninety
9 percent confidence level that he said that.

10 Q. Was that also early in the spring
11 semester of 2022?

12 A. Yeah, when I found out that --
13 after that conversation with the director of
14 exec ed.

15 Q. Did you reach out to have a meeting
16 or was this in a phone call or an email, with
17 Ben Tepper?

18 A. Yeah, that was in-person phone --
19 in-person conversation.

20 - - - - -

21 (Thereupon, Deposition Exhibit 3,
22 06/28/2017 Memo To Mark Sullivan
23 From Peter Ward, Bates Number
24 OSU_002433, was marked for purposes
25 of identification.)

1		-	-	-	-	-
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2 Q. Okay. I'm going to hand you what's
3 been marked Defendant's Exhibit 3. Just take a
4 moment to review that.

5	A. Okay.
---	----------

6 Q. Do you recognize Defendant's
7 Exhibit 3?

8	A. Vaguely.
---	-------------

9 Q. Is that your signature at the
10 bottom?

11 A. Yes. Or it must be DocuLink.
12 That's not how I usually sign.

13 Q. It was DocuSigned by --

14 A. DocuSign, yeah. Okay.

15 Q. Is that a program you would have
16 used in and around this time to sign documents?

17	A. Yes.
----	---------

18 Q. Okay. And what is this exhibit?

19 A. So this was one of the dean's
20 programs where he had Peter, Peter Ward that
21 was responsible for doing a lot of exec ed and
22 consulting exec ed. And Peter was interested
23 in having me work with Tata over in India, Tata
24 Motors. So he was -- so this was probably a
25 document that was contractually --

1 MR. PETROV: Mark, just read the
2 document.

3 Q. I'm just asking what the document
4 is.

5 A. So it's an employment contract, I
6 guess.

7 Q. It says, "Reemployment" --

8 A. Okay.

9 Q. -- in the Re: category.

10 A. Okay.

11 Q. And then it appears -- and correct
12 me if I'm wrong. It appears to be giving you a
13 term of employment from September 1, 2017,
14 through August 31, 2019, correct?

15 A. Yeah, yeah.

16 Q. So this was for another two-year
17 term?

18 A. Yes.

19 Q. Does Exhibit 3 appear to be a true
20 and accurate copy of what would have been your
21 first reappointment letter?

22 A. I gather so.

23 MR. PETROV: Well, actually,
24 David, I'm sorry. Not to interrupt.

25 But that raises just a brief

1 recordkeeping point. So Exhibit 3 has an OSU
2 Bates number on it --

3 MR. STOUFFER: Yes.

4 MR. PETROV: -- and I have no
5 problem with you asking him questions about
6 what he recognizes of course. But am I correct
7 that OSU -- you're not challenging the
8 authenticity in this case of documents that
9 have OSU Bates numbers that it produces. Is
10 that right?

11 MR. STOUFFER: I'm not. I'm just
12 putting on the record that he recognizes the
13 documents, he authenticates them. We can just
14 dispense with that, so.

15 MR. PETROV: Okay. All right.
16 Thank you for that clarification. I appreciate
17 it. And I'll stay out of your way on questions
18 like that going forward.

19 - - - - -

20 (Thereupon, Deposition Exhibit 4,
21 04/02/2019 Memo To Mark Sullivan
22 From Anil Makhija, Bates Number
23 OSU_000057, was marked for purposes
24 of identification.)

25 - - - - -

1 BY MR. STOUFFER:

2 Q. All right. I'm going to hand you
3 Defendant's Exhibit 4.

4 MR. STOUFFER: (Handing.)

5 MR. PETROV: Thanks.

6 Q. Let me know when you're done
7 reviewing Exhibit 4.

8 A. I'm done.

9 Q. Okay. This appears to be the
10 second reappointment letter. And is that your
11 signature at the bottom?

12 A. Yes.

13 Q. And is it correct that it appears
14 that the term of this reappointment was
15 September 1, 2019, through August 31, 2021?

16 A. Yes.

17 Q. Does this appear to be a true and
18 authentic copy of your April 2, 2019,
19 reappointment letter?

20 A. Yes, yes, yes.

21 Q. Okay. And, by the way, as far as
22 the signature goes, is that signature down
23 there more of what you remember as your
24 signature or is that -- because it's slightly
25 different than the last one.

1 MR. PETROV: Object to form.

2 But go ahead, Mark. You can answer if
3 you understand the question.

4 A. It's close enough.

5 - - - - -

6 (Thereupon, Deposition Exhibit 5,
7 04/22/2021 Memo To Mark Sullivan
8 From Anil Makhija, Bates Number
9 OSU_000058, was marked for purposes
10 of identification.)

11 - - - - -

12 Q. All right. I'll hand you what's
13 been marked as Defendant's Exhibit 5. Let me
14 know when you're done.

15 A. Okay. Done.

16 Q. Okay. Under the Re -- under the
17 line for, Regarding, it says, "Reappointment,"
18 and also, the date is April 22, 2021, correct?

19 A. Yes.

20 Q. And that's your signature at the
21 bottom?

22 A. Yes.

23 Q. And is it correct it appears that
24 this letter is notifying you of a reappointment
25 as a senior lecturer from August 15, 2021, to

1 August 14, 2022?

2 A. Yes.

3 Q. And that's for one year, correct?

4 A. That's right.

5 Q. And the prior reappointment letters
6 we examined, it said they were both two year --

7 A. Right.

8 Q. -- correct?

9 A. Yeah.

10 Q. What was your reaction, when you
11 saw the one-year reappointment?

12 A. So I was surprised and I asked Bob
13 Lount, my new supervisor, who is department
14 chair. And he said that they were moving to
15 just one-year contracts across the board for,
16 you know, senior lecturers.

17 Q. So Bob Lount told you that they
18 were moving towards one-year contracts --

19 A. That's right.

20 Q. -- across the board?

21 A. Yes, for all positions, lecturer
22 positions.

23 Q. For all lecturer positions?

24 A. Yeah.

25 Q. And did you talk about this letter

1 with anyone else?

2 A. Yes. A lot of my peers were really
3 concerned about this.

4 Q. Which ones?

5 A. I remember the gentleman who was
6 next door to me, who was a senior lecturer as
7 well. He taught statistics and something -- I
8 can't -- I could come back with the name later.
9 But this was, you know, now four years ago, so.
10 And also, I talked to Larry Inks, who was a
11 clinical professor. And he said, "Yeah, I
12 believe that's what they're doing." And he
13 said, "You know, as you know, you're qualified
14 to be a clinical professor, but as a senior
15 lecturer, I think that's what they're doing."

16 Q. I apologize. Did you say, "Larry
17 Inks"?

18 A. Yeah. I-n-k-s.

19 Q. And then regarding the first person
20 you mentioned that you can't remember their
21 name --

22 A. Right.

23 Q. -- when you say they were next to
24 you --

25 A. Physically next door.

1 Q. -- like their office?

2 A. Their office.

3 MR. PETROV: Just let him finish.

4 Q. Okay. And did you talk to anyone
5 else, other than Lount, the unknown professor
6 and Larry Inks about the one-year contract?

7 A. Yeah, I believe I did but did not
8 know -- I can't recall the names of people, but
9 that's the message that I was getting.

10 Q. Then you also mentioned Bob Lount.
11 And just for the record, who is Bob Lount?

12 A. He's -- he was at the time a
13 department chair -- excuse me -- for management
14 and HR.

15 Q. Okay. And --

16 A. -- that was for a relatively short
17 period of time. And he was my last supervisor,
18 before he was taken out of that position.

19 Q. And he's also one of the individual
20 defendants, correct?

21 A. That's right.

22 Q. And then did Lount say anything
23 else during this meeting regarding the one-year
24 contract extension?

25 A. No. And I'm not sure if that was

1 email or what because it was -- it was
2 impossible to get to meet him in person. So I
3 think that was -- I'm not positive, but there
4 was some kind of communication in some way
5 between the two of us and that was the message.
6 And it was what I heard from a couple of other
7 lecturers as well.

8 Q. So before you mentioned a clinical
9 professor and I just kind of want to clarify
10 for the record and kind of explore this. Are
11 there different types of professors appointed
12 at --

13 A. Yes.

14 Q. -- Fisher?

15 A. Yes.

16 Q. What different types of professors
17 are there?

18 A. They come under two different
19 categories. One is tenured and the other is
20 nontenured. Tenured professors tend to be
21 research professors. They are required, as is
22 all faculty, to teach at least one course. The
23 nontenured, the second of two, have multiple
24 tiers in them: lecturer, senior lecturer and
25 then a transition professor position called a

1 clinical professor, which is in between the
2 two. In many business schools, it's a
3 professor of practice.

4 They have to have a Ph.D. and they should
5 have twenty years of business experience and
6 should have published, which I accomplished all
7 that. I've written a couple of books, had at
8 least 20 years and had a conversation with Ben
9 Tepper, who was my hiring manager. And he
10 acknowledged that I met all the requirement,
11 but that there were only a couple of positions
12 available and they were all filled at the time
13 until like the last year that we were working
14 together.

15 And he said, Yes, he knows that one of
16 those clinical professor positions was opened
17 but that they're trying to close -- they're
18 trying to eliminate or not fill those
19 positions, so. And he said he realized that I
20 was qualified for it but that, this is not the
21 time.

22 Q. And it was Larry Inks who said
23 that?

24 A. It was Ben Tepper who was my --

25 Q. Ben Tepper.

1 A. -- who was my supervisor at the
2 time --

3 Q. Okay.

4 A. -- but Larry Inks had said in a
5 separate conversation, "You're far more --
6 you're very qualified for that position."

7 Q. Did you ever apply or ask --

8 A. I wasn't allowed to apply.

9 Q. Okay. How was that communicated to
10 you, that you weren't allowed to apply?

11 A. So Ben verbally told me that. And
12 he said, "Mark, I realize that's more money,
13 more stature and everything, but that's the
14 very reason why they're trying to minimize the
15 number of those positions," that it's a higher
16 expense for the school.

17 Q. And this conversation would have
18 happened in, around --

19 A. A number of years ago. It was --
20 so it was before Bob Lount became the
21 supervisor -- or the department chair, so. And
22 I'm guessing that it was around 2019.

23 Q. Okay. Just for the record, do you
24 recall the time that Bob Lount was the
25 department chair?

1 A. Yeah. Before they, some people
2 would say, demoted or transferred him out. He
3 was there for only like three years.

4 Q. And so what years were those?

5 A. You know, as your records probably
6 indicate, they're somewhere around 2020 to 2023
7 or '24, somewhere -- 2019 to 2023 or somewhere
8 around there. Whatever your records say.

9 Q. Okay. Did you receive --

10 A. By the way, that was his -- I'm
11 sorry for interrupting, but I can't help but
12 suggest that was his first position in
13 management. And there was many of my
14 colleagues that were really upset with him. He
15 wouldn't meet with us and it was just a whole
16 bunch of things about his inability to deal
17 with conflict or tension or issues.

18 And so they -- while they initially were
19 turned down by loads of other tenured research
20 professors for this position, they finally
21 found him and got him to take the position and
22 it was a lot -- with much conflict from my
23 colleagues about what he was like.

24 Q. When you say, "He won't eat lunch
25 with us ," who is, "Us," in that statement?

1 A. "Eat lunch?"

2 Q. I think you said that at the
3 beginning, he wouldn't --

4 A. So while he -- he did not want to
5 spend time -- FaceTime with us, so. So an
6 example of that, it was a tradition that at the
7 end of the year there would be a holiday party
8 in the department chair's house, and he
9 canceled it. That was far too intimate for
10 him. And instead he had a very brief meeting
11 he was billing as, Staff update and holiday
12 celebration. And that was kind of him. He
13 kept his office door closed, unlike his
14 predecessor. So I couldn't -- I tried to get
15 to him and particularly during this whole issue
16 and he would not meet me.

17 Q. And what timeline or what timeframe
18 are we talking about, this behavior?

19 A. So this was particular -- well, he
20 was like this no matter what. But particularly
21 during this issue from during the fall of 2021
22 to the spring of 2022, he would not meet with
23 me to the extent that he chastised his
24 assistant who tried to schedule a one-on-one
25 appointment with me and him in person and he

1 yelled at her -- that's what she told me -- for
2 even attempting to try to set a meeting up.

3 Q. And when did that happen?

4 A. That happened around -- around
5 somewhere in October of 2022 -- 2021.

6 Q. Okay. Were there any health
7 emergencies going on in 2020 and 2021?

8 A. Yeah. So there was -- well, they
9 were getting out of -- we were completing
10 getting out of Covid. That was the first
11 in-person class post Covid and when -- so
12 anyway, that --

13 Q. Okay. Did you receive a
14 reappointment letter after the one that we saw
15 in Exhibit 5?

16 MR. PETROV: Which is still in
17 front of you if you need to remember what
18 Exhibit 5 is.

19 THE WITNESS: This one. Thank you.

20 A. I don't think so, no.

21 Q. So Exhibit 5 would have been your
22 last reappointment letter?

23 A. Yes.

24 - - - - -

25 (Thereupon, Deposition Exhibit 6,

1 02/25/2022 Memo To Mark Sullivan
2 From Anil Makhiya, Bates Number
3 OSU_002622, was marked for purposes
4 of identification.)

5 - - - - -

6 Q. Okay. I'm going to hand you what's
7 been marked as Defendant's Exhibit 6.

8 A. Okay.

9 Q. Let me know when you're done
10 reviewing the document.

11 A. Done.

12 Q. Okay. And what is Exhibit 6?

13 A. So it's a termination notice,
14 nonrenewal notice.

15 Q. And you received Exhibit 6?

16 A. Yes.

17 Q. And was that on February 25, 2022?

18 A. I guess so, yeah.

19 Q. And then it says -- the title of
20 the document is, "Associate Faculty
21 Appointment-Nonrenewal Notification Letter."

22 A. Yes.

23 Q. And it says that your appointment
24 as senior lecturer will end on May 14, 2022.

25 A. Um-hum.

1 Q. And then when you received this
2 letter, were you surprised?

3 A. I was disappointed. So I had a
4 meeting with -- a ten-minute phone appointment
5 with Bob Lount on, I believe February 22 where
6 he said that, "You are not being renewed, your
7 contract." And when I of course asked him why
8 and so on, he said, "Well, you can find out
9 from HR, but your, you know, classroom behavior
10 and performance."

11 Q. Did you ask him for any specifics?

12 A. You bet I did. And he said, "Well,
13 you can" -- this was classic Bob. He said,
14 "Well, I really don't want to talk about that.
15 You can talk to HR. But, yes, you are being
16 let go because of" -- in so many words he said,
17 You are being let go because of what you taught
18 and how you taught it in the Crucial
19 Conversations class.

20 Q. So that's what he said during a
21 phone call with you?

22 A. Right.

23 Q. And that phone call happened when?

24 A. It was about February 22 of 2022.

25 Q. And so this letter is dated

1 February 25.

2 A. He said that I would be getting
3 this letter in the mail or email or physical
4 mail or something.

5 Q. So this letter wasn't the first
6 notice you received of your nonrenewal?

7 A. Right.

8 Q. When did you first learn of your
9 nonrenewal?

10 A. It was on that day of the 22nd is
11 when he, you know -- so I was told three
12 different times. And the first time was -- was
13 this date of February 22, over the phone over a
14 ten-minute HR status.

15 Q. Did you call Bob Lount or did Bob
16 Lount call you?

17 A. He called me. We had -- he had
18 asked, much to my surprise, that he wanted to
19 actually talk to me. And so the purpose of
20 that talk was to let me go --

21 Q. Okay. And --

22 A. -- the last time he had talked to
23 me was in September during week 5 of my 15-week
24 course where for another about ten minutes had
25 basically when he said he was being forced to

1 call because HR wanted him to call me and find
2 out what's going on in the class. I explained,
3 you know, that I was doing role plays and
4 simulation and explained what was behind all
5 that. And he said, "I get that. I understand,
6 you know, that's part of your course. Just
7 continue doing that. It sounds fine and
8 reasonable to me. Just carry on." And the
9 last time I heard from him after that
10 September, ten-minute phone call was on
11 February 22, when he was letting me go. At no
12 other time he would meet with me.

13 Q. Okay. You also mentioned that
14 Lount mentioned performance, correct?

15 A. I'm not sure if he used that word
16 but, behavior; that the behavior, what was
17 going on in the class, there was questions or
18 issues around the class and that you're being
19 let go because of that. You can talk to HR
20 further about any -- any more of your
21 questions.

22 Q. Did he give any more detail as far
23 as performance or behavior other than --

24 A. I wish he would.

25 Q. -- other than the incident you're

1 referring to?

2 A. No --

3 Q. No. Did you ask --

4 A. -- but he said --

5 Q. -- for more detail?

6 A. Of course. And he said, "You're
7 being let go because of how you acted in the
8 class, and you can talk to HR to learn any more
9 detail." And I said, "Can you give me an
10 example? Could you share what -- what
11 specifically? It sounds like there's been some
12 behind-the-curtain conversations around this
13 and no one is coming to me. And I've tried to
14 get ahold of you multiple times and you would
15 not meet with me." And he said, "Are you done,
16 because I am? Just call the -- call HR for any
17 more details."

18 Q. Okay. And so no more details were
19 provided by Lount at that time during that
20 phone call?

21 A. Right. He just said it was because
22 of my classroom teaching practices.

23 Q. Did you talk to anyone else about
24 not being renewed after being told on
25 February 22, 2022?

1 A. So I talked with Dr. Larry Inks,
2 who was having problems himself. He was --
3 he's a clinical professor and they wanted to --
4 I guess they did cut his pay in half. And so
5 we were kind of going back comparing notes and
6 things.

7 Q. And what did you tell -- or when
8 did your meeting happen with Dr. Inks?

9 A. That was by phone. It was during
10 that spring of 2022. I felt this was a private
11 and privileged matter. I knew that if I had
12 made this public that there would be a major
13 student initiative of sorts, that -- humbly
14 said, I was considered a beloved, excellent
15 professor and I knew that there would be -- and
16 I didn't want a scene.

17 I was trying to look at, what is the most
18 constructive way without creating -- there
19 would be a lot of noise and could be even brand
20 issues. I knew the school newspaper, Lantern,
21 would love to get a story like this and have
22 this public. And so I kept this pretty quiet
23 and maybe that's to my disadvantage here but --
24 so I didn't go around blabbing about this. I
25 think there were -- I think he may have said

1 something to a couple of people. I don't know.

2 Q. Okay. So other than Lount and
3 Inks, anyone else you talked to about being
4 non-renewed?

5 A. Just that statistics professor next
6 door to me. Again, I'm sorry, I can't think of
7 his name right now but -- but we had somewhat
8 of a privileged relationship in sharing typical
9 things about employment in an organization and
10 he -- like he would say --

11 MR. PETROV: Mark, his question was
12 just, did you talk to anybody else other than
13 Lount and Inks.

14 A. Yeah, so just this one other
15 person.

16 Q. Okay. And that was it?

17 A. Yeah.

18 Q. Okay. You mentioned there were
19 multiple -- and I just want to seek
20 clarification -- there were multiple times you
21 were notified of your nonrenewal; the phone
22 call with Lount, the letter. And then is there
23 another one?

24 A. So Ben Tepper and also Anil
25 Makhija. So Ben Tepper on May 14 at 2:00, he

1 had spoken with me about this. And then Anil,
2 before I left.

3 Q. Was the conversation with Tepper on
4 May 14 in person?

5 A. Yes.

6 Q. Okay. And what did you discuss
7 with Ben Tepper?

8 A. Why was I leaving. And he said,
9 "Mark, I am so sorry this happened to you.
10 This happened to me. I was also charged with a
11 student and I -- you know, for practices in the
12 classroom." We were both leadership
13 professors, even though he also held an
14 administrative role as a senior associate dean
15 and was my previous hiring manager. And he
16 said, "I'm sorry this happened to you. And
17 that I, too, also was being challenged with a
18 student in terms of my practice -- practices in
19 my ways of engaging them in class. And I went
20 to leadership and got that immediately fixed.
21 But I was insulted that I would be in this
22 situation and I felt like quitting, but that
23 was" -- so he said, "I'm sorry this happened to
24 you but that's" -- you know, that's it. I did
25 ask him -- of course I asked him a number of

1 other things like, well, why -- why not me, why
2 couldn't you or someone help fix me?

3 Q. What else did you discuss as far as
4 the other number of things that you discussed
5 with him? What were those things?

6 A. Well, that is what it was focused
7 on, was the fact that -- that I was being fired
8 because of how I was teaching in class.

9 Q. And that's what Tepper said?

10 A. In his own way, yes.

11 Q. What do you mean, "His own way"?

12 A. Well, I can't quote every word,
13 but, you know, when he said, "I'm sorry that
14 this happened to you as well, I, too, was
15 challenged by a student for how I was
16 teaching." So he was saying, you're being let
17 go because of how you are teaching in your
18 class.

19 Q. Regarding Tepper's -- the
20 situation -- I'm going to strike that.
21 Regarding the student that Tepper allegedly
22 stated had made a complaint --

23 A. He did say it.

24 MR. PETROV: Let him finish --

25 THE WITNESS: Okay.

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1 MR. PETROV: -- let him finish the
2 question so you understand what he's asking.

3 THE WITNESS: Sorry, sorry.

4 BY MR. STOUFFER:

5 Q. -- made a complaint about him, what
6 details do you know about that student and that
7 situation?

8 A. I don't. About his student?

9 Q. About his student --

10 A. Yeah.

11 Q. -- about that situation.

12 A. I don't.

13 Q. Do you have any idea as to the
14 timeline of when that occurred to Tepper?

15 A. I'm imagining that it was sometime
16 within that spring of 2022, yeah.

17 Q. Okay. Anything else you discussed
18 with Tepper at that meeting?

19 A. No.

20 Q. Okay. And then you mentioned
21 talking to Makhija on your way out --

22 A. Yeah.

23 Q. -- or near the end of your term.

24 A. Yeah.

25 Q. Approximately when did that happen?

1 A. That was near my last days of
2 working there. So my last day was, you know,
3 that May of 2022. And so it was sometime near
4 that time period and he took about 10 minutes,
5 maybe 12 minutes. And I asked him point blank,
6 I said, "Anil, Why am I losing my job here?
7 Why are you firing me?" And he responded with,
8 "Well, there's, you know, a lot of -- a lot of
9 work here to look at what happened and it
10 seemed like it was because of how you taught
11 your class."

12 And I asked him more, about what -- so
13 can you give me examples, can you give me
14 detail. And he said, "You know, it's best if
15 you have that conversation with HR. There's,
16 you know, a number of parties involved in
17 this." And I said, "Well, I realize you're a
18 busy man, sir. But, Anil, if there's anything
19 you can do, I always went out of my way to help
20 when you guys needed it. Instead of teaching
21 five courses, I taught seven and even eight and
22 I helped you. And this would be the time when
23 you could help me by at least looking into it."
24 And he said, "I -- I think you better take this
25 up with HR."

1 Q. Okay. Was there anything else that
2 you talked about with Makhiya at that meeting?

3 A. It was just the reason I was being
4 let go and his saying that it was his -- his
5 acknowledgment that it was teaching -- my
6 teaching the class was the problem and that
7 they were letting me go because of that,
8 because of how I was teaching the class.

9 Q. And there was nothing else, other
10 than that discussed about the decision for your
11 nonrenewal in that conversation?

12 A. Right.

13 MR. STOUFFER: I have one more
14 exhibit and then we'll take our first break.

15 MR. PETROV: Okay. I was just
16 going to ask. That makes sense.

17 MR. STOUFFER: This will be quick.

18 - - - - -

19 (Thereupon, Deposition Exhibit 7,
20 08/18/2021 Memo To Mark Sullivan
21 From Anil Makhiya, Bates Number
22 OSU_002434, was marked for purposes
23 of identification.)

24 - - - - -

25 Q. I'll hand you what's been marked as

1 Defendant's Exhibit 7. And let me know when
2 you've finished reviewing Exhibit 7.

3 A. Okay.

4 Q. So do you recognize Exhibit 7?

5 A. Yes.

6 Q. And what is Exhibit 7?

7 A. It's a merit compensation -- annual
8 merit compensation document.

9 Q. And it appears to be titled, "2021
10 To 2022 Annual Merit Compensation," correct?

11 A. Yes.

12 Q. And then down at the bottom in the
13 chart on the far right side it says, "2021
14 To 2022 Base Salary," correct?

15 A. Yes.

16 Q. And then it lists \$160,131.07 as
17 your base compensation.

18 A. Yes.

19 Q. And then was that your final salary
20 at OSU?

21 A. Yeah. So there is an executive ed
22 income stream. And I think that for purposes
23 of the annual merit compensation summary
24 document, which I would construe this as being,
25 that they would list just the base salary and

1 not include the executive ed income stream
2 whereas in STERS, if you looked at that, it
3 would be -- it would include both.

4 Q. And as far as the executive ed
5 compensation, was that awarded to you by
6 semester or by academic year or --

7 A. By pay period, I believe --

8 Q. By pay period. Was --

9 A. -- so, for example, if I taught a
10 course in this month for Honda, for example,
11 then next month or thereabouts would receive a
12 differential, increased pay that would reflect
13 my teaching at Honda.

14 Q. Okay. And then does this appear to
15 be a true and accurate copy of your 2021
16 to 2022 annual merit compensation letter?

17 A. Yes, yes.

18 MR. STOUFFER: Okay. We can take
19 that break. Thank you.

20 VIDEOGRAPHER: Off the record. The
21 time is 11:47.

22 (Recess taken.)

23 VIDEOGRAPHER: We're back on the
24 record. The time is now 12:08.

25 BY MR. STOUFFER:

1 Q. All right. By the way, I forgot to
2 ask at the beginning: Do you prefer to be
3 called, "Mark," "Dr. Sullivan," or, "Professor
4 Sullivan"?

5 A. Thank you for asking. For our
6 purposes, "Mark," is fine --

7 Q. "Mark," is fine?

8 A. -- or -- yeah. I respond to
9 anything as long as you're looking at me.

10 MR. PETROV: First names are
11 common in depo's --

12 THE WITNESS: Yeah.

13 MR. PETROV: -- as long as you're
14 comfortable with it.

15 THE WITNESS: Yeah.

16 BY MR. STOUFFER:

17 Q. Okay. Mark, do you recall we just
18 talked about you had conversations about your
19 nonrenewal letter, correct, Exhibit 6? You
20 listed Dean Makhija, former Dean Makhija, you
21 listed Ben Tepper and Robert Lount; and you
22 said that one or more of those individuals
23 recommended you talk to HR, correct?

24 A. That's right.

25 Q. Did you contact HR about it?

1 A. I attempted to multiple times.

2 Q. When did you attempt to contact HR?

3 A. So in the fall and spring
4 of 2021, 2022, I walked down to the HR suite in
5 the Fisher building, Fisher Hall. And every
6 time that I was there, unlike pre Covid -- this
7 is post Covid -- the door was locked and you
8 weren't allowed in. I actually -- one or two
9 times I kind of got in when someone else was
10 going in that was not in HR but was in the
11 suite and couldn't find anybody from HR, so --

12 Q. And so --

13 A. -- I wanted an in-person
14 conversation to have some follow-on questions
15 to ask them, what's going on here, and, what --
16 what kinds of conversations are you having with
17 who, and, what are they saying about me, and,
18 what are you saying about me. And I couldn't
19 get that.

20 Q. Okay. So I want to take a step
21 back. So you said fall of 2021 and spring
22 of 2022?

23 A. Yeah, so around November.

24 Q. And so I'm asking specifically when
25 you were notified of your nonrenewal, so that

1 would have been --

2 A. Okay.

3 Q. -- February 22 --

4 A. Yes.

5 Q. -- of 2022, correct?

6 A. Yes.

7 Q. After that point, did you reach out
8 to HR about your nonrenewal?

9 A. Yes.

10 Q. And when did you reach out?

11 A. So multiple times right after --
12 like I say, within the next month or two
13 months, I went down to the HR suite multiple
14 times to see if I could catch a way of getting
15 in and talking with them.

16 Q. And how did you try to communicate
17 with HR?

18 A. I also was able to actually have a
19 brief phone call with William Wattercutter, who
20 appeared to me as being kind of an outlier,
21 like wasn't in a position to share a lot of
22 details. And so I would ask him like, Bill,
23 what's going on here. And he knew me more in
24 somewhat of a familiar stranger, friendly way.
25 And I said, "Can you help me out here? What's

1 going on?" And he said, "Well, you know,
2 there's a number of different things. It
3 probably best to talk to McConnell," or whoever
4 that other lady was, Jeannine or, but it went
5 nowhere basically. That was it.

6 Q. Did you try to email anyone?

7 A. I think there was an email of
8 inquiry. It's a little fuzzy right now, but I
9 was really eager to try to get some kind of
10 response -- definitive response as to what my
11 future was and so on.

12 Q. And did you receive a response from
13 Fisher or OSU's HR department?

14 A. Well, outside of verbal responses
15 and exchanges from Makhija, Lount and Tepper in
16 those face-to-face conversations, I just -- you
17 know, there may have been an email. I don't
18 know. But I tried with Bill Wattercutter and
19 I'm not sure. There was some lady that was in
20 HR and -- but, you know, I had a hard time
21 getting into the HR suite.

22 Q. Do you remember approximately when
23 that conversation with Bill Wattercutter
24 happened?

25 A. I'm speculating it was sometime

1 around March or -- or April.

2 Q. Of '22?

3 A. Of '22.

4 Q. Okay. And then what did
5 Mr. Wattercutter say?

6 A. Well, so to try to follow up, so
7 the main thing was, You need to talk to so and
8 so, the lady from HR, to get any more specific
9 details. But I did send him -- I did send him
10 an email that showed -- and this was in May --
11 a testimonial. It was a student initiated
12 testimonial deck about my teaching a Crucial
13 Conversation class that was held at -- like my
14 last class. And he commented, "That's a great
15 deck and something I'm sure you're proud of,"
16 and I said, "Yes."

17 Q. Did he mention anything else about
18 your nonrenewal?

19 A. No.

20 Q. Okay. Since the spring semester,
21 so February through May of 2022, have you tried
22 to reach out since your separation to the HR
23 department regarding this issue?

24 A. No.

25 - - - - -

1 (Thereupon, Deposition Exhibit 8,
2 Third Amended Complaint, was marked
3 for purposes of identification.)

4 - - - - -

5 Q. Okay. I'm going to hand you what's
6 been marked as Defendant's Exhibit 8. Just
7 take your time and let me know when you're done
8 reviewing it.

9 A. Okay.

10 THE WITNESS: May I ask a question
11 about whether or not this is Judge Watson's
12 opinion?

13 MR. PETROV: It's not the
14 opinion --

15 THE WITNESS: Oh.

16 MR. PETROV: -- it says right on
17 the front it's the Third Amended -- which
18 actually leads me to the objection I was going
19 to make. I'll just make this one time, so I
20 don't interrupt you with every question.
21 You're free to ask questions about the third
22 amended complaint. I'll object on the grounds
23 that it may call for legal conclusions of which
24 Dr. Sullivan is not aware and also that he did
25 not prepare the document. But with that, go

1 ahead and ask the questions that you have about
2 it.

3 MR. STOUFFER: All right.

4 BY MR. STOUFFER:

5 Q. All right. Looking at the first --
6 well, first off, what is Exhibit 8?

7 A. It appears to be a summary opinion
8 of my case.

9 Q. If you look at the first page on
10 the right side under the Judge's name, what
11 does it say there?

12 A. The, "Third Amended Complaint." Is
13 that what you're --

14 Q. Yes. And so, to your knowledge, is
15 this the latest complaint that has been filed
16 in your case?

17 MR. PETROV: Objection, foundation.
18 You can answer if you know.

19 THE WITNESS: Okay.

20 A. I believe that's, yes.

21 Q. Okay. And then on the left side of
22 the first page, there's a number of individuals
23 listed: Anil Makhija, Robert Lount, Bennett
24 Tepper, Jennifer McLendon, William
25 Wattercutter, and then there's unknown

1 personnel 1 through 5, which I'm not going to
2 ask about. So those first five individuals,
3 those are the individual defendants in this
4 case?

5 A. Yes.

6 Q. Okay. Is Jennifer McLendon the
7 woman from HR that you were referring to?

8 A. Yes.

9 Q. Okay. Do you see at the top of the
10 page where it says, "Page ID number," colon,
11 and it has a number?

12 A. Yes.

13 Q. Can you turn to the page that
14 has 229 --

15 A. Excuse me.

16 Q. Bless you.

17 A. (Witness complies.)

18 Q. And then do you see where it says,
19 "First Cause of Action"?

20 A. Yes.

21 Q. And what does it say your first
22 claim is or first cause of action is?

23 A. "By punishing and terminating
24 Plaintiff for expressing his views in his
25 academic speech and educational course

1 content..."

2 Q. So your first cause of action is a
3 first amendment retaliation under 42 USC,
4 section 1983?

5 A. Yes.

6 Q. And specifically you're alleging a
7 violation of your freedom of speech?

8 A. Yes.

9 Q. Can you turn to the page ID
10 numbered 231.

11 A. (Witness complies.)

12 Q. And you have, "Second Cause of
13 Action," correct, on that page?

14 A. Yes.

15 Q. And it says, "First Amendment
16 violation under 42 USC, Section 1983, content
17 and viewpoint discrimination."

18 A. Um-hum.

19 Q. And so that's your second and last
20 cause -- or cause of action you brought in your
21 latest complaint?

22 A. Yes.

23 Q. Okay. And that's also based on an
24 allegation that your rights to freedom of
25 speech were violated?

1 A. Yes.

2 Q. Okay. I want to go through the
3 individual defendants and ask you some
4 questions about them. So during your time at
5 OSU, was Ben Tepper your direct supervisor?

6 A. During part of the time, yes, yes.

7 Q. And generally what timeframe was he
8 your direct supervisor?

9 A. From 2015 to 2019 or so, roughly.
10 And I worked until 2022, so it was like
11 from 2015, when he was my hiring manager, and
12 then continued to be my department chair or
13 supervisor until roughly 2019.

14 Q. Okay. And that was during the time
15 that Tepper was the chair of the MHR
16 department?

17 A. So he was -- Ben was my department
18 chair and supervisor and hiring manager from my
19 start date of 2015 to roughly 2019 --

20 Q. Okay.

21 A. -- and then they put in -- when he
22 got promoted to a senior associate dean, he
23 became the supervisor of my new supervisor, who
24 is department chair Bob Lount. So Bob Lount
25 was roughly my boss from 2019 to 2022, give or

1 take.

2 Q. Okay. And is that how you know Bob
3 Lount, strictly from your time --

4 A. No --

5 Q. -- as your supervisor?

6 A. -- no. We were peer -- so there's
7 more to it.

8 Q. Okay. And then when did you first
9 meet Robert Lount?

10 A. I first met him, I think it was the
11 first week or two of employment. He was a
12 research professor, tenured, and I invited him
13 out for coffee and he -- the nature of the
14 conversation was more about his divorce that he
15 was going through, but then he was interested
16 in my executive experience. And we then became
17 colleagues, one of the few that was on the
18 executive faculty. And we had some
19 experiences with that where I would always be
20 placed up first and he would follow me.

21 So he would -- I would teach Crucial and
22 he would teach Negotiations. And he had an
23 experience with me where the mid career, 30
24 to 50 year old crowd, started to complain to
25 him about his teaching, how he taught

1 negotiating. They would say, Mark Sullivan
2 would do something different. He would do,
3 blah-blah-blah.

4 He then came back to me saying, "I don't
5 want -- I don't want to ever follow you in
6 executive ed. I need to be before you, not
7 after you, because you're just -- there's too
8 much that I have to deal with." And I said --
9 and that kind of colored -- my view was it
10 colored our relationship a bit and -- but there
11 were a couple of other times we had -- the pay
12 was going down from \$5,000 a day to like 4,000
13 or something.

14 And I said, you know, all the -- I
15 explained why we should speak up about that and
16 he said, "Well, could you do that and go to" --
17 so at the time he was a professor. I was a
18 lecturer, but he wanted to see if we could get
19 more pay, like our old pay back. And it was my
20 opinion, although there's no concrete evidence
21 that he was a little either threatened or
22 frustrated around my presence for the fact that
23 I -- you know, I had a following, a lot of
24 students would talk about me and so on, so.

25 Q. When you say, "Following," what do

1 you mean like --

2 A. Well, like I say, for the twice
3 weekly 90-minute office hours, my hallway was
4 crowded with students and some of them weren't
5 even my students. Some of them came -- some of
6 them were actually his students. And some of
7 them were other students that came to seek
8 either career advice or life counsel or
9 something or another. And my students were
10 often -- many of them were men without fathers
11 or fathers that were MIA and they looked at me
12 as kind of a guiding role in their life. So he
13 was aware, I think of the stature that I had
14 and I think probably -- well, I'll leave it at
15 that.

16 Q. Okay. When your contract was not
17 renewed, Lount was the MHR department chair at
18 the time.

19 A. That's right.

20 Q. And so Tepper was not in that role
21 at that time?

22 A. He was not in that role, but he was
23 in a decisionmaking role, so. There were three
24 signatories on the internal document, from what
25 I understand. I think I had seen something

1 that -- but I don't know what it was, but I
2 heard that Ben Tepper was involved in the
3 decision. Obviously Makheel (phonetic). I
4 mean, Anil Makhija. And I believe either Bob
5 Lount, as the department chair, was either an
6 influencer or a decisionmaker. There were
7 three people involved --

8 Q. And so --

9 A. -- along with HR.

10 Q. -- this internal document, when
11 would you have seen it?

12 A. If -- it's vague. All I remember
13 is that Ben Tepper had -- I was struck with the
14 fact that he was involved in the decision. We
15 were -- until then we were close personal
16 colleagues and he had high regards for me. I
17 couldn't believe that he would be involved in
18 this without ever asking me what my opinion was
19 or what's going -- what's going on with your
20 teaching practice in your class. It was like
21 they were all hidden behind a curtain and not
22 sharing anything with me. A lot of talk going
23 on, but they wouldn't come to me and say, you
24 know, like what's -- what's your side of this?

25 Q. I kind of just want to hone in at

1 least for the moment on the internal document
2 you referenced. What did this document look
3 like?

4 A. I'm not sure.

5 Q. How do you know about it?

6 A. Because I just -- I was really
7 eager to find out what was going on. And so I
8 think near the end, near May of 2022, there may
9 have been some document I either saw or heard
10 about in which Ben was involved in
11 decisionmaking.

12 Q. And what did this document discuss
13 or -- what did this document have as far as its
14 substance?

15 A. That three people along with HR
16 were involved in deciding to not renew my
17 contract.

18 Q. And was this an email or was this
19 some memo?

20 A. I don't know.

21 Q. Did you ever see it yourself?

22 A. I'm not sure if it was something
23 written or something that was verbal but --

24 Q. It's a, "Yes," or "No," question.
25 Did you see the document with your own eyes?

1 A. For me there's three options; yes,
2 no, or, I don't know.

3 I don't know.

4 Q. No. This is a, "Yes," or, "No,"
5 question. You either saw the document or you
6 didn't.

7 A. Then I can't answer it.

8 Q. Well, try your best. Did you see
9 the document?

10 MR. PETROV: Objection, foundation.
11 He said he's not sure if there's a document,
12 so.

13 Q. So where did the information come
14 from that there's an internal document?

15 A. I don't know --

16 Q. Okay.

17 A. -- I just know there were three
18 people that were involved in the decisionmaking
19 along with HR.

20 Q. All right. So you also have Anil
21 Makhija listed as an individual defendant.

22 A. Yes.

23 Q. Who is Anil Makhija?

24 A. He's the -- he was at that time the
25 dean of the school --

1 Q. All right.

2 A. -- of the college.

3 Q. And did he play a supervisory role
4 over you?

5 A. Not officially. There were times
6 he had asked me for help, like one time he
7 wanted me to do an in-service training for the,
8 quote, dean team. So he was seeking guidance,
9 advice to have me teach some of the Crucial
10 Conversation concepts to his team. So under
11 that capacity, he was more of a coach in terms
12 of the challenges that the dean team had; but
13 generally speaking, we had more of an
14 administrator to employee relationship.

15 Q. And can you kind of explain what
16 this dean team is?

17 A. The dean team were individuals that
18 were either an associate or assistant dean that
19 would help to advise or guide the dean, which
20 was Anil. So Ben Tepper was -- I believe he
21 was a senior associate dean. There was another
22 gentleman who was like the executive associate
23 dean. And then there was, I think a couple of
24 other associate type deans like Peter Ward was
25 a dean for exec ed.

1 Q. Um-hum. And what did the team do?

2 A. They executed college policy --

3 Q. Okay.

4 A. -- and officially they were
5 supposed to provide quality assurance in the
6 execution, provide feedback and even give
7 feedback to people is what they were supposed
8 to be doing.

9 Q. Okay. Did you work closely with
10 Dean Makhiya?

11 A. Not closely but -- we had more of a
12 familiar stranger -- I think he had high regard
13 for me and was the one who gave me the
14 distinguished teaching award out of all the
15 graduate faculty members. So, I mean, I think
16 he thought highly of me. But the school
17 operationally was basically run by the
18 executive dean, executive like deputy dean and
19 also Ben Tepper.

20 And he really ran the market facing, the
21 outside as what you would expect. You know, so
22 he would do the fundraising. He would be
23 involved in brand building. You know,
24 occasionally for ceremonial things, he might
25 come in for a deposition here or there. There

1 were a number of different cases here and
2 there. So he was more market facing external,
3 stakeholders, fundraising, blah-blah-blah. And
4 these other couple of deans were more internal,
5 shop stewards making sure that everything was
6 being run the right way.

7 Q. Okay. And then you also listed
8 Jennifer McLendon. And who is that?

9 A. She was some kind of an HR business
10 partner. I think -- I'm imagining that she
11 represented OSU central and was -- would be
12 farmed out to where needed for more sensitive
13 issues like this within any of the 18 colleges
14 or schools within the university.

15 Q. And are you aware of what duties or
16 responsibilities McLendon had at Fisher College
17 of Business?

18 A. No, no.

19 Q. You do not. Okay. Did you
20 regularly work with Ms. McLendon when you were
21 a senior lecturer at Fisher College of
22 Business?

23 A. No.

24 Q. Who is William Wattercutter?

25 A. His last role -- so he's a

1 full-time OSU employee in HR. He's always
2 been, from what I understand, for a couple of
3 decades at the Fisher College of Business. He
4 was the HR manager full-time. And then in the
5 OSU central reorg, he became more of like an
6 assistant to the business partner, which I
7 gather was probably this McLendon. So he was
8 the primary decisionmaker. He became more of
9 an influencer and go-to person to get stuff
10 done that was HR related.

11 Q. Okay. And are you aware of what
12 duties and responsibilities Mr. Wattercutter
13 had at Fisher College of Business?

14 A. Not really.

15 Q. And then did you regularly work
16 with Mr. Wattercutter, when you were a senior
17 lecturer at Fisher?

18 A. Once in a great while. I mean,
19 occasionally. So one of a number of outside
20 the classroom activities I was called -- I was
21 asked to do was to call on companies for --
22 when I was teaching consulting and just I think
23 to get advice or guidance around any issues I
24 need to be aware of regarding my recruiting
25 companies to be involved with consulting. And

1 was there anything from an HR standpoint, so it
2 was more information gathering. I think that
3 was perhaps it.

4 Q. Okay. Other than the one instance
5 that you talked with Mr. Wattercutter at the HR
6 office that we discussed earlier, have you
7 talked to him any other time about your
8 termination?

9 A. No.

10 Q. And then Jennifer McLendon, have
11 you spoken with her at all about your
12 termination -- or, I'm sorry -- your
13 nonrenewal?

14 A. I believe there was one time at the
15 end. I think it was more around, did you get
16 the package, or me reaching out. I had tried
17 all different ways to get information. And so
18 I think that was the substance of the
19 transaction.

20 Q. So it was just she was ensuring
21 that you received something?

22 A. Yeah. I received an email,
23 documents, one of these documents that you had
24 shared. And I had asked -- one of the things I
25 wanted to do was get copies of my HR file and I

1 was having trouble getting copies. And like I
2 did ask Bill and he said, "You'll have to talk
3 to Jennifer," I guess it is. And Jennifer said
4 she -- I believe that she was not in a position
5 of answering that at this time. And that was
6 about it.

7 Q. So other than that conversation --

8 A. Nothing else.

9 Q. -- nothing else?

10 - - - - -

11 (Thereupon, Deposition Exhibit 9,
12 12/31/2020 Position Description,
13 Bates Number OSU_002613, was marked
14 for purposes of identification.)

15 - - - - -

16 Q. Okay. I'm going to give you what's
17 been marked as Defendant's Exhibit 9. Let me
18 know when you finished reviewing the document.

19 A. Okay. I'm done.

20 Q. Okay. Do you recognize Exhibit 9?

21 A. I don't recall. I can say, yes --
22 MR. PETROV: Well, only say, yes,
23 if you recall seeing it.

24 A. -- I don't recall.

25 Q. Okay. I'm just going to -- for

1 purposes here, I'm going to represent this is a
2 position description for the senior lecturer
3 position. In the section that says, "Detailed
4 Job Description," it states, "Teaches
5 undergraduate and graduate level courses in
6 department management and human resources; may
7 serve on department and any college
8 committees."

9 So as far as the first clause goes, does
10 that accurately describe the majority of your
11 duties were teaching?

12 A. It doesn't accurately describe my
13 job, but it was all about teaching.

14 Q. All about teaching. Okay. And
15 then I think we kind of discussed this earlier.
16 Did you ever serve on department or college
17 committees?

18 A. Yes.

19 Q. And which committees were those?

20 A. So there was something informally
21 referred to as, the council of elders. It was
22 the former dean, so previous to Anil. And this
23 council was of very senior, seasoned professors
24 providing advice, more market-facing advice for
25 this dean emeritus whose role was to create an

1 expanded role or amplified role in the Columbus
2 business community. And so he picked four or
3 five of us, met regularly for a period of time
4 to help guide him on how we would, not just do
5 brand building but a lot of relationship
6 building and cultivation with the right kind of
7 business circles within central Ohio.

8 Q. Okay. Any other department -- any
9 other department, college committees that you
10 served on?

11 A. Yes. So an investment -- paneled
12 the Black Swan Investment Club --

13 Q. I'm sorry. Can you repeat that?

14 A. -- the Black Swan Investment Club.
15 Also on a panel of judges for venturing. So I
16 was an advisor and also a judge on the
17 inaugural Fisher venturing conference. So it
18 was a bunch of typical kind of business
19 students that were -- had some venturing
20 project and they were asking for money. And so
21 I was on the panel of judges to give feedback
22 on that, and was involved in helping them run
23 that first inaugural conference.

24 Q. Okay. Anything else as far as
25 committees?

1 A. So there was a council -- it was --
2 there were these short -- this is way back, so
3 this is more like 2016. There was an
4 intermediate -- a number of industry domains
5 where there was a professor that represented
6 that domain. I represented the consulting
7 domain. And we would meet monthly to provide
8 guidance on how the school should invest funds
9 or staff or branding assets for these different
10 programs that we had in these different
11 domains. So there was -- so I was regularly
12 pulled in a lot of directions to do all kinds
13 of things.

14 There was a risk institute. I was asked
15 to help coordinate -- help to think about how
16 to have 200 executives from around the world
17 come in and have some kind of meaningful
18 conference. And I was also a speaker there
19 about risk and threat. So there were things
20 like that. I mean, it just goes on and on.
21 And in the nominating letter from my award, Ben
22 Tepper wrote, that he was -- that Dr. Sullivan
23 was pulled in many different directions. I can
24 come up with a much longer list, but there's a
25 lot of different kinds of committees, aside

1 from overloading on courses.

2 Q. How was your performance tracked
3 each semester in carrying out your teaching
4 duties?

5 A. Very poorly.

6 Q. Do you know the method by which
7 they were --

8 A. Yeah. It was a very flawed method.
9 So they only based performance on student
10 evaluations. Never once would the person
11 oversee -- and I'm talking as a performance
12 management expert, as someone who in industry
13 for years ran performance management. They
14 never once came in to actually observe me in
15 class the whole time. So they're coming on --
16 and when there's an issue with a faculty
17 member, instead of outreach and looking into
18 what's fact and what's opinion, what's real,
19 what's not, instead of any of that, that was
20 like outsourced to HR. So all they did was
21 crunch some numbers based on student evals.

22 Now, it so happened that if you look at
23 my evaluations, you'll see they're all above
24 average. And there's variations of course from
25 year to year or semester to semester. It might

1 be a little up or a little down, but it was all
2 above average. And with Ben Tepper for those
3 first number of years, it was always
4 exceptional. But, you know, when Bob Lount of
5 course came in as my supervisor seeing our
6 history, saw that it was always above average
7 but it was -- you know, there was some
8 variation there.

9 Q. So there were variations in your
10 student eval's, you're saying?

11 A. Well, a little bit.

12 Q. Are those student eval's called
13 SEI's?

14 A. Yeah.

15 Q. And what does that stand for, that
16 acronym?

17 A. Student -- I'm not sure.

18 Q. Okay. And when are SEI's filled
19 out?

20 A. Usually at the end of the semester
21 by each student.

22 Q. And how do the students -- strike
23 that. Are there scores that students give
24 faculty?

25 A. Yes.

1 Q. And then is there a range to those
2 scores?

3 A. Yeah. You know, it's -- now I'm
4 kind of out of the loop, so I'm not sure what
5 the scores are. I just know that bottom line I
6 was always above average. And there's another
7 way of ranking a professor that was more on
8 line. You can go online, as my three college
9 aged sons would tell me, is you could go on
10 line -- Rank My Professor, I think is the name
11 of it. I'm not positive.

12 But my boys said, Dad, you know, usually
13 those ranking numbers for professors is really
14 low because it's a lot of disgruntled students
15 that don't like their experience with that
16 professor, but yours are really amazingly high
17 for what this is all about. I never really
18 looked at them, but I think it's called Rank My
19 Professor.

20 Q. Is that a private website?

21 A. I don't know.

22 Q. Other than SEI's, anything else
23 that you remember OSU utilizing to evaluate
24 your teaching performance?

25 A. No. Well, except for the teaching

1 award, so that was -- at Fisher that was a big
2 deal. So there's like 200 faculty members and
3 they're picking only one who is considered the
4 best teaching professor for undergrad and for
5 graduate level. And I was selected as the best
6 teaching professor at a graduate level. And so
7 there was faculty in administrative review
8 sessions to determine who was best, and I won
9 the graduate level for that performance
10 assessment.

11 Q. During your interview for the
12 senior lecturer position --

13 A. Yes.

14 Q. -- did Ben Tepper discuss with you
15 what was expected of senior lecturers as far as
16 SEI scores?

17 A. No.

18 Q. Did he ever discuss that with you
19 afterward, while he was still chair?

20 A. No.

21 Q. How about Robert Lount, did he ever
22 discuss with you what your SEI scores should
23 be?

24 A. No.

25 Q. At any time?

1 A. No. What they did talk about was
2 grading. So when I was being hired, I asked
3 Ben, "Do you have any policies around grading
4 that I need to be aware of as a professor?"
5 You know, I was thinking is there a forced
6 thing where, you know, 10 percent have to be in
7 this level or whatever. And he said, "No.
8 Just we -- that's your business, what you
9 pick."

10 But then Bob Lount, in the last two years
11 or so, instituted a policy where there was
12 forced grading. And he was not happy with the
13 fact that I was giving what I felt were the
14 appropriate grades to students. He wanted only
15 a small number -- and this was -- a lot of my
16 peers were pretty upset with the fact that we
17 were now being told we had to force -- no
18 matter what they were really worth, we had to
19 put them in some category.

20 Q. Okay. I'm going to stay on the
21 SEI's for now. Did you ever talk to your
22 colleagues about SEI scores?

23 A. I tended not to because I was above
24 average and I just didn't feel that was
25 constructive or appropriate to talk about,

1 about that.

2 Q. And so you said, "Tended not to."
3 Does that mean you did or did not talk to
4 colleagues?

5 A. Well, people came to me. So, yes,
6 people did come to me saying, Wow -- like when
7 I became an exec ed faculty member, they were
8 saying, Well, you must have gotten really high
9 student eval's to become an exec ed member,
10 which I said, Well, it was -- you know, and
11 when I got the award for being a distinguished
12 graduate teacher there, you know, it came up
13 around then. There were a couple of people
14 that said, "Wow, you must do well with your
15 SEI's."

16 Q. Okay. So you were employed at
17 Fisher for about seven years?

18 A. Yes.

19 Q. And in seven years, you never
20 discussed SEI scores with either Tepper or
21 Lount, the two department chairs that
22 supervised you?

23 A. So let me see. Well, first of all,
24 it was almost impossible to have any kind of
25 communication with Bob Lount. He would just

1 not meet with me or talk with me, so. With Ben
2 Tepper, we didn't talk about it because it
3 was -- if you looked at his scores, they were
4 always exceptional, so. You know, we talked
5 more about ideas, exercises and stories and
6 games and things that we could do like teaching
7 methods that would influence content, because
8 we both were leadership professors. He had an
9 administrative role but he was also a
10 leadership teacher. And so we would compare
11 notes on what could make it interesting --

12 Q. Um-hum.

13 A. -- so we talked more about that
14 than about grades or grading. And there was --
15 at that time there was no policy around
16 grading.

17 Q. So sitting here today, do you
18 recall what SEI scores you were expected to
19 achieve in your classes?

20 MR. PETROV: Objection, foundation.
21 You can answer, Mark.

22 A. No. There's -- no.

23 Q. And were you ever made aware of
24 that --

25 A. No.

1 Q. -- of the expected -- okay.

2 - - - - -

3 (Thereupon, Deposition Exhibit 10,
4 04/10/2020 Memo To Mark Sullivan
5 From Robert Lount, Bates Numbers
6 OSU_000013-000014, was marked for
7 purposes of identification.)

8 - - - - -

9 Q. I'm going to hand you Defendant's
10 Exhibit 10. Let me know when you finished
11 reviewing.

12 A. Okay.

13 Q. Do you recognize Defendant's
14 Exhibit 10?

15 A. Yes.

16 Q. What is Exhibit 10?

17 A. Basically it's an evaluation.

18 Q. An evaluation of what?

19 A. Classroom performance.

20 Q. Of who?

21 A. Of me.

22 Q. And this is an annual review letter
23 dated April 10, 2020, regarding your
24 performance the prior academic year?

25 A. Yes.

1 Q. Okay. If we go down to evaluation,
2 it lists, SEI range of 4.1 to 4.5 for a course,
3 it looks like MHR 3100, OB/HR, correct?

4 A. Right. It's foundation of
5 management and human resources. So I taught a
6 human resource course there.

7 Q. The next one is 3200 OBHR for
8 undergrad business majors, SEI range 4.4
9 to 4.6?

10 A. Right.

11 Q. And then MHR 7236 Crucial
12 Conversations, 2.3 to 4.9, correct?

13 A. Yeah.

14 Q. And then it lists the next course,
15 which is 3632, projects for business
16 industry, 4.1 to 4.6.

17 A. Correct.

18 Q. And so are those different sections
19 of those courses that you taught?

20 A. Those were the names of different
21 courses that was part of my course load.

22 Q. And then, for example, with the
23 Crucial Conversations one --

24 A. Oh, yeah. The answer is, yes. So
25 for the first one, 3100 and 3200 were different

1 sections of the same material taught to a
2 different audience.

3 Q. Um-hum. And with the two numbers
4 in the parentheses to 2.3 and 4.9, does that
5 mean one class SEI scores were 2.3 and the
6 other class was 4.9?

7 A. Yes, that's right.

8 Q. Okay. Do you remember receiving
9 that SEI score the prior academic year,
10 the 2.3?

11 A. Yeah, yes.

12 Q. Did that concern you, getting a 2.3
13 or was a 2.3 acceptable in your mind?

14 A. Well, bottom line was, I was above
15 average so I was -- you know, but I also
16 realized that this was a flawed system. So I
17 did not consider this to be an accurate view of
18 my performance at all, as I continued to get
19 letters and notes from students that were
20 saying how much they were impacted, their
21 personal positive impact.

22 Q. When you say the 2.3 was not
23 accurate --

24 A. That's right.

25 Q. -- did you ever take advantage

1 of -- and I apologize -- second-to-last
2 paragraph, last page of Exhibit 10 under,
3 Workload. Did you ever take advantage of the
4 right to file anything or object to the 2.3?

5 A. Yeah. I felt at this time that it
6 was -- it was fruitless, that Bob was my
7 supervisor, Bob Lount was not going to meet
8 with me. I had tried and he -- I mean, this is
9 one of the reasons why he was taken out of this
10 position. I mean, I didn't feel he had the
11 skill or the capability to --

12 MR. PETROV: Mark, his question
13 was, did you take advantage and contact Bob.

14 A. Yes.

15 Q. And so you filed a -- let's see,
16 you filed comments regarding the 2.3 in one of
17 your sections Crucial Conversations.

18 A. I filed an email or had reached out
19 to him but that was it. It wasn't a -- I'll
20 just leave it at that.

21 Q. Did Professor Lount reach out to
22 you to discuss the 2.3 at all?

23 A. Absolutely not --

24 Q. Okay.

25 A. -- neither did he reach out to me

1 when I had exceptional scores, positive or
2 high, high or not. He never would reach out to
3 me.

4 Q. Okay. And the range of SEI scores,
5 is a 4 considered high?

6 A. Yes.

7 Q. What about a 3?

8 A. That's considered, you know, more
9 in the average range.

10 Q. And then what about a 2?

11 A. So that's considered acceptable
12 but -- acceptable, but could need some
13 attention. And god forbid, maybe even coaching
14 from someone who is your boss.

15 Q. And then what about a 1?

16 A. That's unacceptable.

17 Q. Okay. Is Defendant's Exhibit 10 a
18 true and accurate copy of your April 10, 2020,
19 annual review letter?

20 A. So officially for what they have
21 from a record standpoint, yes, but I would say,
22 no, from a standpoint of reality.

23 - - - - -

24 (Thereupon, Deposition Exhibit 11,
25 04/09/2021 Memo To Mark Sullivan

1 From Robert Lount, Bates Numbers
2 OSU_000054-000056, was marked for
3 purposes of identification.)

4 - - - - -

5 Q. Okay. I'm going to hand you what's
6 been marked as Defendant's Exhibit 11. And let
7 me know when you finished reviewing.

8 A. Okay. Yes.

9 Q. Do you recognize Defendant's
10 Exhibit 11?

11 A. Sure.

12 Q. And what is it?

13 A. So it's a faculty evaluation of me
14 in my class -- classes.

15 Q. And this annual review letter is
16 dated April 9, 2021?

17 A. Yes.

18 Q. And this is from Robert Lount?

19 A. Yes.

20 Q. Okay. And going to the second page
21 of the exhibit under, "Evaluation," it lists
22 MHR3100, 3200, MHR7236, Crucial Conversations,
23 BA3632, projects for business and industry, and
24 then BA3630, consulting emerging. Is that
25 correct?

1 A. Yes, yes.

2 Q. Then starting with the sentence,
3 "Moreover," it states -- I'm sorry. The next
4 sentence, "Although." "Although there have
5 been several instances of very high ratings,
6 i.e. 4.9, there have also been some ratings
7 that are quite low, i.e., 2.3, 2.71, 2.83. For
8 instance, for GAP in 2018, you received an
9 overall SEI of 2.83 and for GAP in 2019, you
10 received an overall SEI of 2.71. Teaching
11 evaluations in the 2s are concerning and
12 atypical for a senior lecturer."

13 This was given to you on April 9 of 2021?

14 A. Right.

15 Q. And did you have any concerns with
16 the evaluation as --

17 A. I did. And in part this was during
18 Covid and it was -- this is an unusual -- so
19 the GAP program was very unusual, that there
20 were peer faculty that were all going to be
21 getting the same grade. And we were -- I was
22 really the GAP director or coordinator where
23 these business students were going to be
24 interning in other countries for consulting.

25 And because it was Covid, it was really

1 pretty flawed. We were -- it was very hard to
2 run a program not knowing if we could go to
3 another country or not. And we were all going
4 to get the same grade. And there was no
5 support by my boss on, how do we manage this.
6 He had no interest in having any involvement
7 whatsoever.

8 And I said, "This is -- this is a program
9 that's been run into the ground in Covid. If
10 we're depending on the goodwill of these
11 privately held companies in these different
12 countries" -- like we're trying to get them to
13 France and to Spain and these other places.
14 So, you know, it was frustrating. And you can
15 see why the grades were lower. I felt it was
16 beyond our control and that there should have
17 been some alternative grading --

18 Q. Okay.

19 A. -- especially with it being -- with
20 it being in a Covid environment and we're
21 trying to run consulting programs in countries
22 that are infested with Covid, as we were. And
23 we're getting graded on their satisfaction
24 levels. So these are students that are pissed
25 off and upset that they can't go to Paris or

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1 Rome and so they're going to take it out on us.

2 Q. I just kind of want to point to the
3 GAP in 2018. 2018 would have been before 2020,
4 when Covid --

5 A. Yeah.

6 Q. -- came to the United States,
7 correct?

8 A. This is a program that had only --

9 MR. PETROV: There's no question.

10 THE WITNESS: Okay.

11 MR. PETROV: There was not a
12 question. Yeah.

13 MR. STOUFFER: Thank you.

14 THE WITNESS: Thank you. Sorry.

15 BY MR. STOUFFER:

16 Q. And then GAP in 2019, that's also
17 prior to March 2020, when Covid began in the
18 United States.

19 A. Yeah.

20 Q. Did you talk to Robert Lount about
21 this section of your evaluation letter at all?

22 A. No. I couldn't reach him.

23 Q. Did you talk to anyone else at the
24 MHR department?

25 A. That would not be -- I mean, no one

1 went to HR for things around faculty --

2 Q. No, not HR. I'm sorry. The MHR,
3 so the department, did you talk to any other
4 faculty members?

5 A. So that -- no, because the only one
6 that would be appropriate to have been talking
7 to the department chair of MHR, which was Bob
8 Lount --

9 Q. Um-hum.

10 A. -- and this was a program I was
11 asked to take on outside of -- this was on top
12 of everything else that was a problem child, as
13 described to me by Ben Tepper. He asked, as a
14 special favor, can you take this. This was run
15 into -- run into the ground. There were
16 only 20 students. I had bumped it up to 80
17 students getting them by recruiting -- doing a
18 lot of work, but it was a really complex,
19 difficult program. This wasn't a standard,
20 kind of knowledge based program. It was skill
21 based and it was global and you had to work
22 through a lot of different people. And Bob
23 Lount wouldn't have any -- as my boss, he
24 wouldn't have any knowledge of what this really
25 involved and nor any interest.

1 Q. Okay. Just a few more questions
2 then we'll go off the record to discuss
3 potentially a lunch break.

4 So regarding Bob Lount and these scores
5 in the 2s, you said you didn't just talk with
6 him about it, but did you attempt to talk to
7 him about it?

8 A. Oh, yeah.

9 Q. Okay. So did you send him -- how
10 did you attempt to contact him?

11 A. So a number of times I would go
12 down to his office and his door would be
13 closed, so -- and I would knock on the door.
14 And someone would say inside, "In a meeting."
15 Or his assistant would say, "Well, I'll let him
16 know that you're interested in meeting with
17 him." And that was -- you know, because I
18 wanted to have more of an in-person discussion
19 and I would never get one from him.

20 Q. Okay. And then did you take
21 advantage of your right to write a personal
22 response to Exhibit 11?

23 A. I didn't find that to be
24 encouraging at all.

25 Q. Is that, no?

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1 A. Yes, no, no. I only wanted to do
2 things that would work, that would make a
3 difference and that would help my students, and
4 that would not.

5 Q. Writing a letter as --

6 A. So where does that go?

7 MR. PETROV: Mark --

8 A. Yeah, no.

9 MR. PETROV: -- he asked a
10 question. You answered his question --

11 THE WITNESS: Yeah.

12 MR. PETROV: -- so you're good
13 right now --

14 THE WITNESS: Yup.

15 MR. PETROV: -- unless David has
16 a next question.

17 MR. STOUFFER: I guess we'll go off
18 the record.

19 MR. PETROV: Okay.

20 VIDEOGRAPHER: Off the record. The
21 time is now 1:10.

22 (Lunch Recess Taken.)

23 VIDEOGRAPHER: We're back on the
24 record. The time is now 2:12.

25 BY MR. STOUFFER:

1 Q. All right. Mark, during your time
2 as senior lecturer, what were the sizes of your
3 courses?

4 A. For my undergrad courses,
5 foundations of management, would be up to 300
6 or so students. I had really the largest
7 classes, for the most part. For my graduate
8 level, they were initially smaller. Like for
9 the early years, they were more like 20 or so.
10 They were capped at that. And then by the
11 later years, they're more like double that.
12 For Crucial Conversations and for the cap
13 consulting went from 20 to 80.

14 Q. Okay. How would you -- was there
15 any -- did you get any assistance teaching your
16 larger classes?

17 A. So I had a TA, a teacher assistant,
18 for my larger classes of 300.

19 Q. Is that something you have as of --
20 right when you teach a class that size or is
21 that something that you --

22 A. It was --

23 Q. Sorry.

24 A. -- yes.

25 Q. Okay. And were these like graduate

1 students or could --

2 A. Yes --

3 Q. -- could they be undergraduates?

4 A. -- they were graduate students --

5 Q. And --

6 A. -- Bob did try to take away a TA
7 for my -- in the last year or so; and I, you
8 know, made the case that that's really
9 unrealistic.

10 Q. How many TA's would you be assigned
11 for a single 300 person course?

12 A. So one TA --

13 Q. One TA.

14 A. -- it was a lot of work but -- it
15 was a lot of work for me and a certain amount
16 of work for them.

17 Q. And how did the hiring/assignment
18 process work with TA's?

19 A. So the school, under the guidance
20 of Bob Lount, would approve both the candidates
21 for the TA positions and also the professors
22 that would be allotted a TA. And then the
23 professor would interview the TA's -- TA
24 candidates. And so I would make a hiring
25 decision on the TA's.

1 Q. So you made the hiring decision,
2 not the department?

3 A. Yes.

4 Q. So Bob Lount would select who would
5 serve as a TA or whoever the --

6 A. He would approve the list --

7 Q. He would approve a list?

8 A. -- that would be candidates that
9 could be interviewed.

10 Q. And then what -- and then the next
11 step?

12 A. And then the next step was the
13 professor who would potentially be working with
14 their assigned TA to interview the list --

15 Q. Okay.

16 A. -- and make a decision.

17 Q. You would interview multiple TA's?

18 A. So, multiple candidates. So say if
19 there was a list of ten TA candidates for a TA
20 position, Bob would say, "Okay. These ten out
21 of X number would be in the pool, interview
22 candidate pool" --

23 Q. All right.

24 A. -- and then I would interview --
25 and then I would look at their backgrounds and

1 pick -- say out of ten, I might pick three or
2 four and then interview them and make a
3 decision.

4 Q. How many times were you assigned a
5 TA or --

6 A. Every semester.

7 Q. Every semester?

8 A. Yeah.

9 Q. Okay. Let's see, do you remember
10 being assigned or interviewing a TA by the name
11 of Noni Murithi? And that's M-u-r-i-t-h-i.

12 A. I think so.

13 Q. What do you remember about --

14 A. If she's the right one. So we're
15 talking about -- I've interviewed hundreds
16 of -- or a lot of candidates. There was one
17 extraordinary circumstance where a candidate
18 was -- I think it was during Covid and we
19 couldn't interview them there, so I -- and I
20 think we were in lockdown. So I had the
21 candidate come to my backyard --

22 Q. Okay.

23 A. -- and my wife was with me and I
24 had at least one of my kids. And I interviewed
25 her in our backyard. And she was highly

1 anxious and it appeared she may have been under
2 the influence of something. I don't know what.

3 MR. PETROV: Mark, all this is
4 fine, but I don't know if it's where David
5 wants to go --

6 THE WITNESS: Yeah.

7 MR. PETROV: -- so let him ask his
8 questions and then answer those.

9 BY MR. STOUFFER:

10 Q. Okay. So you did have an interview
11 with, I'm going to call her, Noni?

12 A. I think so.

13 Q. And that was in your backyard?

14 A. Yes.

15 Q. And then she engaged in some sort
16 of abnormal behavior?

17 A. Yes.

18 Q. And then what happened?

19 A. I called 911, because she was
20 making unusual noises underneath our picnic
21 table. She was lying on the ground and, you
22 know, it was very inappropriate interview
23 behavior. And so -- but for her benefit, I
24 called the police and had her be picked up. I
25 think they wanted her to go to some kind of a

1 lockdown place. And I said, "Please send her
2 to the hospital, not to -- you know, to be
3 checked out for health."

4 Q. And was all that you remember of
5 what happened?

6 A. Yes. Oh, no, no. Her -- I think
7 her mother called me --

8 Q. Okay.

9 A. -- and wanted me to seriously
10 consider her, and I explained what had
11 happened. I said, "It's hard for me to
12 consider that given the circumstances."

13 Q. Yeah, that makes sense. What
14 happened next? Did you alert anyone at the
15 college of it?

16 A. Oh, yeah.

17 Q. Who did you talk to?

18 A. Bob Lount and also there was
19 someone from HR.

20 Q. Okay. Was it either Jennifer
21 McLendon or --

22 A. Yeah --

23 Q. -- William Wattercutter?

24 A. -- yeah, I think -- well, I'm not
25 sure if it was Jennifer. She may have been

1 involved. I think there were multiple people.
2 It was a pretty extraordinary circumstance. So
3 I was able to actually talk to Bob, I think by
4 phone --

5 Q. Okay.

6 A. -- and he agreed that I should move
7 on to someone else.

8 Q. Okay. And did he assign you or did
9 you go and hire a new TA?

10 A. So he actually assigned me someone
11 else --

12 Q. Okay.

13 A. -- which was a little unusual.
14 Usually I would pick the person. In this case,
15 we're coming up on the class was going to start
16 and we needed someone right away so he assigned
17 me someone.

18 Q. So you were in communication with
19 Bob Lount?

20 A. For that one occasion, yes.

21 - - - - -

22 (Thereupon, Deposition Exhibit 12,
23 08/24/2020 Email To Robert Lount
24 From Mark Sullivan With Attachment,
25 Bates Numbers OSU_002742-002743, was

1 marked for purposes of
2 identification.)

3 - - - - -

4 Q. Okay. I'll show you what's been
5 marked as Defendant's Exhibit 12. Okay. Just
6 let me know when you're done reading the email.

7 A. Okay.

8 Q. So just to confirm, on your email,
9 OSU, is that sullivan.956@osu.edu?

10 A. Yes.

11 Q. Okay. And then that's Robert
12 Lount's email?

13 A. Yes.

14 Q. Okay. It looks like you recounted
15 here to Lount what happened regarding Noni,
16 correct?

17 A. Um-hum.

18 Q. Does this refresh your recollection
19 with any of the details of what transpired?

20 A. Yes.

21 Q. And so she showed up to your home
22 for the interview and the Uber driver was
23 calling her a gender essentially, calling her
24 gender slurs, correct?

25 A. That's what I was told.

1 Q. You didn't witness it?

2 A. No.

3 Q. Who told you that?

4 A. She did.

5 Q. Okay. And then, let me see. And
6 then she was talking to herself, highly
7 distracted, rolling of the eyes. Does that
8 sound accurate?

9 A. Yes.

10 Q. Okay. Then did you ever follow up
11 with Robert, after this email, on her status?

12 A. Oh, yes, yeah.

13 Q. And what was his response?

14 A. Well, he felt assured that it was
15 being handled correctly, so. You know, I had
16 recapped what had happened. I called 911. She
17 was taken in. And then I was -- I recapped
18 with him, I think by phone a couple times.
19 Like one time here, we are in interim status.
20 And then, once again, when I reminded him that
21 I need someone for the position within a
22 certain period of time. He offered so and so.
23 I got that person. I interviewed. And then I
24 think I confirmed with him that I was going
25 with that new candidate.

1 Q. Okay. And then do you know if Noni
2 ever came back to Fisher?

3 A. I have no idea.

4 Q. Okay. I'm going to change
5 subjects. As part of your job as senior
6 lecturer, were you responsible for selecting
7 the literature that were assigned to your
8 courses for the students?

9 A. Yes, yeah.

10 Q. How would you go about selecting
11 which textbooks or literature that the students
12 were assigned?

13 A. So I always looked at what the
14 learning objectives were for the course and for
15 the student from a knowledge and skill
16 perspective.

17 Q. Okay. And then would you -- would
18 you look at a list of potential textbooks and
19 decide which one to use or --

20 A. Yeah. I mean, that's -- yes.

21 Q. Okay. And what if a professor or
22 senior lecturer wants to assign their own book
23 to a class, what's the procedure for that?

24 A. Usually, given that's the case with
25 a whole number of professors at Fisher; that

1 they write a book in which they want to use
2 that. I, too, had written a book and wanted to
3 use that as well as other complementary
4 materials. I wrote the book in part to help my
5 students learn things that they weren't getting
6 from anywhere else. So for Crucial
7 Conversations, they used my leadership book
8 called, "Fly When Trouble Visits." And they
9 also used the licensed material that was from a
10 company that provided that.

11 Q. Okay. Was there a procedure prior
12 to 2021, for getting a book that you had
13 published assigned to your own courses
14 approved?

15 A. No.

16 Q. So prior to 2021, there was no
17 procedure?

18 A. Right.

19 - - - - -

20 (Thereupon, Deposition Exhibit 13,
21 "Thrive: When Trouble Visits!"
22 Xeroxed Front and Back Cover, Bates
23 Number OSU_002701, was marked for
24 purposes of identification.)

25 - - - - -

1 Q. Okay. And I'm going to hand you
2 Defendant's Exhibit 13. Is this the cover of
3 your book, "Thrive"?

4 A. Yes.

5 Q. And when did you publish that?

6 A. This is the popular press edition,
7 the second of two editions, which was -- the
8 publishing date was June of last year.

9 Q. Okay. And you were kind of going
10 into it, but what does the book focus on?

11 A. So it focuses on personal
12 leadership resilience when -- three conditions:
13 When stakes are high, demand is beyond capacity
14 and the future is uncertain. So it provided
15 tips, tools, knowledge, concepts on how to
16 function, what to say, what to think and do
17 during these difficult moments.

18 Q. Do you see the text that's to the
19 right of your photograph there?

20 A. Yeah.

21 Q. One thing that stood out to me is,
22 as far as like it lists McKinsey & Co.

23 A. Yeah.

24 Q. Did you at some point work for
25 McKinsey?

1 A. I was a -- what they referred to as
2 an alliance partner for McKinsey. So when I
3 was a managing director for Apex, McKinsey
4 reached out to me and asked if I could create
5 an association with them given the expertise I
6 had in the middle market space for OD,
7 organizational development.

8 Q. Okay. And when did that occur?

9 A. That was around 2013 or '14,
10 somewhere around there.

11 Q. Okay. So you contracted with them
12 but didn't necessarily work for them directly?

13 A. So I contracted with them, yeah --

14 Q. Okay.

15 A. -- but they -- they -- they
16 referred to me as, an alliance partner.

17 Q. Okay. Let's turn to Crucial
18 Conversations. What is, Crucial Conversations?

19 A. It's a course that helps
20 individuals to have the skills to deal with
21 conflict resolution or with challenges and
22 tension in difficult moments.

23 Q. Okay. And I apologize if I
24 mispronounce this word. I've been trying to
25 pronounce it correctly. So what kind of

1 pedagogy would you use to teach those topics?

2 A. Sure. And I appreciate your trying
3 to reach into this somewhat obtuse world of
4 professor language. So that is really about
5 bottom line ways of connecting with people and
6 with different backgrounds. And so I found the
7 most powerful, effective way to increase
8 learning, insights, knowledge and skills was
9 through role plays and stories and
10 simulation --

11 Q. Okay.

12 A. -- so that's -- what they sometimes
13 refer to as, "Pedagogy," was also a more
14 layman's term is about methodology or ways of
15 connecting --

16 Q. Okay.

17 A. -- from a learning or cognitive
18 perspective.

19 Q. And I think I generally know what,
20 role play is, but could you just kind of
21 describe how you use role playing --

22 A. Sure.

23 Q. -- in your course?

24 A. So creating real-life scenarios
25 that test the competency level from both the

1 knowledge and skill perspective of some
2 potential learner --

3 Q. Okay. Sorry.

4 A. -- and I would just add one more
5 thing. So there are two types of courses. One
6 was a knowledge course and one is a skill
7 course. This was really -- Crucial
8 Conversation is more of a skill-based course.
9 So the best way to teach or to create a
10 teaching, learning environment is through
11 heavy-duty tell/show/do method of role play,
12 simulation and storytelling.

13 Q. Okay. And what other methods would
14 you use to teach your students?

15 A. Well, there's the Socratic method
16 which --

17 MR. PETROV: May I just ask, do
18 you mean within -- are we just talking about in
19 Crucial Conversations?

20 MR. STOUFFER: In Crucial
21 Conversations. I apologize.

22 MR. PETROV: Thank you for the
23 clarification.

24 THE WITNESS: Sure.

25 BY MR. STOUFFER:

1 A. So I also -- aside from an
2 experiential approach, which is the role play's
3 and simulations, there was more Socratic
4 method, which you would create scenarios for
5 stimulation purposes. Also, raise provocative
6 dimensions or angles around that learning
7 situation --

8 Q. Um-hum.

9 A. -- and getting group feedback. And
10 then there was actual old-fashioned knowledge
11 based teaching where I'd put out concepts. And
12 these concepts would be theoretical frameworks
13 on what to do when you're in certain
14 situations. And then I would give a lot of
15 examples. So unlike a pure knowledge,
16 theory-based class, it was a real -- it was
17 called, blended learning in this methodology.
18 So there was experiential and there was, you
19 know, some of these other kinds of methods.

20 MR. STOUFFER: And did you need a
21 break?

22 MR. PETROV: No.

23 MR. STOUFFER: Okay.

24 BY MR. STOUFFER:

25 Q. And then -- okay. And was Crucial

1 Conversations an elective or core course?

2 A. It was elective. However, many
3 students wanted it to become required and they
4 petitioned to the school that it be -- that it
5 would be required. A lot of people felt that
6 every student should get it. And also
7 professors that were uncharacteristically
8 coming to my classes and sitting in the back of
9 the room watching and listening to it as well.

10 Q. Okay. Do you develop or write
11 syllabi for all your classes?

12 A. Yes.

13 Q. Including Crucial Conversations?

14 A. Yes.

15 - - - - -

16 (Thereupon, Deposition Exhibit 14,
17 BUSMHR #7236 -- Crucial
18 Conversations Syllabus, Etc., was
19 marked for purposes of
20 identification.)

21 - - - - -

22 Q. I'm going to show you what's been
23 marked as Defendant's Exhibit 14.

24 A. Sure.

25 Q. Just let me know when you've

1 finished reviewing.

2 A. Okay.

3 Q. At the top it says, "Spring
4 Course 7236." Would this be the same syllabi
5 that was used in, say, the fall of 2021, or
6 would there be substantial changes?

7 A. Not substantial. It would be very
8 similar. Just since this was the first post
9 Covid, the first in-person class, there were a
10 few tweaks regarding Co -- so it says like on
11 the first page, "Covid 19, sensitive, in-person
12 class required schedule." So there'd be little
13 tweaks, you know, whether it was in Covid time,
14 home based or in person, but that was -- the
15 content itself stayed the same.

16 Q. Okay. In terms of conflicts or
17 stressful situations --

18 A. Sure.

19 Q. -- how would you help your students
20 role play those situations?

21 A. Yeah. So I would often start with
22 an example, sometimes a video of a highly
23 charged emotional social intense thing just to
24 give an example of something that seems scary.
25 And then I came back to teach the concept and

1 then slowly walk them through different stages
2 of engagement. And generally speaking, you
3 know, as a trained psychologist, you have to be
4 very much aware of readiness, how much someone
5 is ready to take a certain degree of intensity.

6 And so while the first video snapshot was
7 kind of shock value -- it's like holy shit.
8 You know, like my god, what do you do -- to
9 create a lot of curiosity and interest with a
10 lot of young folks in the room that would be
11 riveting. And then would slowly, carefully
12 walk them, get them prepared for more
13 intensity. So that was -- you know, what was a
14 little different with this class, it's the
15 first class out of Covid. And they had spent a
16 lot of time in their homes or not together with
17 people. And I had, when Bob Lount called me in
18 September of 20 --

19 MR. PETROV: Hold on. I'm sure
20 David will get to all of this eventually. I
21 just want to make sure that we progress through
22 it in the order that he wants to --

23 THE WITNESS: Okay.

24 MR. PETROV: -- and I think he
25 was still asking questions about methodology.

1 THE WITNESS: Yeah.

2 BY MR. STOUFFER:

3 Q. So you mentioned videos as one
4 method of kind of getting students engrossed in
5 an tense or stressful situation --

6 A. Sure.

7 Q. -- correct?

8 A. Sure.

9 Q. Other than videos, what else would
10 you use?

11 A. Stories.

12 Q. Stories.

13 A. I would also use the Socratic
14 method. I would use a case example. And I
15 often would start with personal versus
16 business --

17 Q. Okay.

18 A. -- because people remember personal
19 scenarios a lot closer. So if there's a
20 breakup with a boyfriend, girlfriend or
21 whatever. And then move to business where
22 something -- if they had a bad day with the
23 boss or whatever, so. But would use methods
24 that were very personal and experiential. And
25 also trying to create a fair bit of emotional

1 safety, because this was scary stuff. So I
2 would try to be very affirming. So I would
3 acknowledge -- I would sometimes even bring up,
4 before the seven weeks, some executive presence
5 things about how people were nonverbally
6 reacting. And I found certain students were
7 less confident.

8 And so the methods would be around trying
9 to build their confidence and competence up.
10 So my talking about how they looked or how they
11 act was very intentional to help build
12 competence around particularly -- I would say,
13 particularly around female students who were in
14 the company of men who sometimes felt
15 intimidated by some of -- so I would
16 intentionally try to focus on building their
17 confidence and competence. There were some men
18 as well, but to me it was just helping students
19 be more confident. So a teaching method that
20 was very much like what we would call Rogerian.

21 Q. Okay. Can you give me an
22 example -- outside of the Whitey Bulger
23 incident that you have in your complaint, can
24 you give me another example where you've used
25 very either aggressive or antagonizing language

1 in a video or something like that?

2 A. Outside of the Whitey Bulger?

3 Q. Yeah. I'm assuming that's not the
4 only --

5 A. Right, right, right.

6 Q. So can you give me an example of
7 something else that you've used in class?

8 A. So a lot of times, I would
9 literally work off them. I would say, "I want
10 you to take 10 minutes to think of a tough
11 time, tough day that you had, work or home."
12 And then they would partner with someone and
13 they'd go through that. And then I would say,
14 "Now I'd like to ask for a volunteer, a
15 volunteer to come down to the well and we'll
16 role play that tough scenario. I'll be you and
17 you be them" --

18 Q. Okay.

19 A. -- so if it's a mean boss that's
20 yelling at you for some reason, you be the mean
21 boss and I'll be you. And we'll use some of
22 the tools that are on the board to see how that
23 works out --

24 Q. Okay.

25 A. -- and so -- and I found that by

1 using their personal cases that became very
2 effective in them considering adopting that
3 practice. It also gave me some signaling as to
4 whether or not I was calibrating -- I had to go
5 at a certain pace. It's a mixed audience.
6 Some people were more seasoned and mature and
7 could take more intensity. Others couldn't.
8 So you had to kind of be careful. And I would
9 have to test readiness levels as well as
10 competency and understanding levels all at the
11 same time with a very mixed audience.

12 Q. Okay. So spring semester 2021,
13 this is the 49th time you've taught --

14 A. Somewhere around there.

15 Q. -- Crucial Conversations?

16 Has the syllabus for your Crucial
17 Conversations course, in terms of the actual
18 meat and potatoes of the course, has that
19 changed drastically over the 40-some times?

20 A. No.

21 Q. Okay. So on September 28, 2021,
22 you had a class. Can you walk me through what
23 happened during that day and the Whitey Bulger
24 scenario?

25 A. So I covered regular class material

1 in my regular way, which included content about
2 trying to detoxify or neutralize intense,
3 disrespectful language. So I remember doing
4 some Socratic work in helping them to see, so
5 what has worked for you in the past when
6 there's disrespectful, hate-based speech that's
7 involuntary. So went kind of from there to
8 sharing some -- sharing the Whitey Bulger story
9 but asking them, As you hear this story, I want
10 you to not get sucked into the emotional
11 intensity of it but be looking more
12 dispassionately at what tools can you use, what
13 can you pick and choose. If you were the
14 police interrogator with Whitey Bulger, how
15 would you react to them --

16 Q. Okay.

17 A. -- so that was -- yeah.

18 Q. So the students were playing the
19 role of the police officer?

20 A. So I asked them by themselves to
21 quietly listen to the story, not be hooked into
22 the disrespectful hate speech but rather, how
23 would you personally, yourself -- and not
24 talking with anyone else, but how would you
25 actually engage with someone that has horrific

1 hate speech. And then I'd like you to talk
2 with your learning buddy -- I had them all in
3 couples -- to kind of vent or brainstorm, what
4 are some things you would say or do when you
5 have such hate speech in your face literally.

6 Q. Okay. And then with this
7 quote that we're about to get to with Whitey
8 Bulger, was that a video or did you yourself
9 say the words?

10 A. I said the words --

11 Q. Okay.

12 A. -- and I felt like -- so part of
13 what I was going for now was to increase shock
14 but also to increase some courage and
15 competence and confidence in a really tough
16 thing to be able to pick a couple of the tools
17 that we had just reviewed around, how do you --
18 how do you detoxify painful, prickly moments
19 with someone that's in your face.

20 Q. Can you please turn back to
21 Defendant's Exhibit 8, page ID number 227.

22 MR. PETROV: Do you mind if I do
23 it, Counselor?

24 MR. STOUFFER: Oh, sure.

25 MR. PETROV: It will probably be

1 faster.

2 Here, why don't you give me this and this
3 is the first half of the document.

4 THE WITNESS: Okay.

5 MR. PETROV: That's the whole
6 exhibit there. (Indicating.)

7 THE WITNESS: Thank you.

8 BY MR. STOUFFER:

9 Q. So paragraph 29, it describes, as
10 you were just discussing, the Whitey Bulger
11 role play scenario, correct?

12 A. Yes.

13 Q. And then can you read paragraph 30?

14 A. "In this module focused on Whitey
15 Bulger, Plaintiff quoted Bulger as saying, 'I
16 don't want to be placed in a prison cell with a
17 bunch of niggers. You make sure I'm in a place
18 with my kind and I'll talk about who was behind
19 that job of killing..."

20 Q. And so that's the line you read to
21 the class?

22 A. But I said it in a more emphatic
23 way.

24 Q. Okay. So you were more emphatic --

25 A. Absolutely.

1 Q. -- because you were engaging in
2 role playing?

3 A. I was trying to create shock,
4 intentionally create this kind of in your face
5 intensity and test their appropriate choice of
6 different tools to bring down the intensity.

7 Q. What was the immediate reaction of
8 the students in the class?

9 A. So, I mean, this was now like
10 the 49th time or whatever it was. So, you
11 know, I -- and this was a large class. So
12 there were like 40 or 45 students, because of
13 the high demand. Everyone wanted to get into
14 this class. And so I'm in a well looking up to
15 a large kind of typical circular type class and
16 I'm playing to the audience, to the crowds.

17 I can't see everybody, but I got the
18 sense that people were taking it in and they
19 were very engaged. They were -- you know, in
20 terms of nonverbals, they were kind of
21 listening to it. There was some people that I
22 found were probably a little taken back by it,
23 which I found to be helpful growth inspired
24 journey for them to kind of have different
25 reactions and to over time get better.

1 Q. Okay. Now, kind of getting back to
2 something you said earlier. This was the 40th
3 something time --

4 A. Yeah.

5 Q. -- that you've taught this course.

6 A. Yeah, right.

7 Q. And the syllabus hasn't changed
8 very much.

9 A. Right.

10 Q. So have you used that --

11 A. Story --

12 Q. -- Whitey Bulger story and quote 40
13 some --

14 A. Every time.

15 Q. Every time. And then did you --
16 did you kind of like give any sort of
17 disclaimer or warning to the class?

18 A. Oh, yes, yes.

19 Q. And how did you communicate that
20 warning?

21 A. So I would say, as I did in all the
22 preceding times, I said, "Now, you're about to
23 be tested in being able to engage in a very
24 intense, hateful, disrespectful moment. You
25 have some choices on the board here in terms of

1 how to neutralize or stay focused --

2 Excuse me.

3 Q. Excuse you.

4 A. Thank you.

5 -- and so there can be two different
6 things going on at the same time inside of you.
7 One is shock and disdain. You can't believe
8 what's going on, that they would say such
9 disrespectful. The other side is to be able to
10 be like a -- and I said this a couple of times.
11 When you land a plane, there's a control tower
12 and a cockpit. You need to be both at the same
13 time. In the control tower, you're looking at
14 zone management. How do all the planes get
15 down.

16 And so here where is the conversation,
17 where is it going, how do you manage the
18 trajectory of that conversation. But you're
19 also in the cockpit where you're experiencing
20 things up close and you need to manage your
21 emotions, how you feel and how you think at the
22 same time as looking macro. So macro/micro.
23 So we're testing you on this. So don't give
24 way to just the intensity of this. Stay
25 focused on the big picture as much as on the

1 little picture.

2 Q. So did you verbally warn the class
3 before you engaged --

4 A. Absolutely --

5 Q. -- in the Whitey Bulger --

6 A. -- yes.

7 Q. -- module or lesson?

8 A. Yeah.

9 Q. Did you send anything in writing to
10 the class, prior to the Whitey Bulger material?

11 A. No, no, no. I didn't feel --
12 because every class had different things I was
13 testing them on. This was on more intensive
14 affective moments and what tools could they use
15 for intense affect as opposed to
16 passive-aggressive or -- I mean, there's all
17 kinds of dysfunctional behavior. This was only
18 one --

19 Q. Okay.

20 A. -- I will say that I was always
21 trying to calibrate readiness level and so, you
22 know, that was -- in the apology, I said,
23 "Crossed the line." What that was about was,
24 did I move too fast, did I go too fast in being
25 able to introduce this concept. Were 20 of

1 them ready or 30 or were all 40 of them ready
2 to have this kind of intense moment.

3 Q. Okay. Have you heard of what's
4 called a, Course highlights document?

5 A. I've heard different variations of
6 that, yeah.

7 Q. Do you know what it is?

8 A. Is that for Fisher or are you
9 talking about in the learning industry itself?

10 Q. For Fisher and Crucial
11 Conversations specifically, did you ever write
12 or draft a course highlight?

13 A. I believe so.

14 Q. And who receives course highlights?
15 Is that on a website somewhere or is that --

16 A. A lot of different stakeholders.
17 So that would be for executive MBA students --

18 Q. Okay.

19 A. -- or I think it was even used by
20 the school for recruiting purposes because it
21 was a unique class. I used it and the school
22 adopted my course in what's called the dean's
23 leadership academy. So they had a -- so I
24 would have to -- they asked me to pitch the
25 course or present it to multiple audiences both

1 internal to the school and outside the school.
2 And a course highlight was always a way to be
3 able to put 20 pounds of marbles in a 5-pound
4 bag.

5 - - - - -

6 (Thereupon, Deposition Exhibit 15,
7 BUSMHR #7236 -- Crucial
8 Conversations Course Highlights, was
9 marked for purposes of
10 identification.)

11 - - - - -

12 Q. I'm going to hand you what's been
13 marked as Defendant's Exhibit 15.

14 A. Okay.

15 Q. Let me know when you're done
16 reviewing the document.

17 A. Okay.

18 Okay.

19 Q. What is this document, Exhibit 15?

20 A. It's a preview of what the 40 hours
21 of 15-week Crucial Conversations course would
22 be.

23 Q. Okay. And did you create this
24 document?

25 A. Yes.

1 Q. And where would it be made
2 available?

3 A. Multiple places. I think sometimes
4 on the Fisher website occasionally as well as
5 handouts as well as digital, you know, and
6 different audiences. So if I was going to a
7 dean leadership academy introductory thing,
8 they would have me come in and take 15 minutes
9 and I might have this as a handout or it could
10 be -- you know, different settings like that.

11 Q. Okay. And then on the -- well, it
12 starts on the bottom of the first page and then
13 goes into the top of the second page. The
14 title for this subsection is, "Example of
15 Provocative Language Used." Do you see that?

16 A. Yes.

17 Q. And then going onto the second
18 page, it has the Whitey Bulger quote you just
19 said involving --

20 A. Right.

21 Q. -- the use of the, "N," word.
22 Has this document been in circulation,
23 since you started doing Crucial Conversations,
24 or has it just been -- was it more recent?

25 A. No. Since it started --

1 Q. Okay.

2 A. -- this is standard stuff.

3 Q. Is this something that has to get
4 approved -- is this something that has to get
5 approved before --

6 A. All content and -- all teaching
7 content and methods have to be approved.

8 Q. I really want to finish this
9 question.

10 A. I'm sorry.

11 Q. So for something like course
12 highlights or your syllabi, would you have to
13 submit that somewhere?

14 A. Yes.

15 Q. To where or to whom?

16 A. To -- not only to the department
17 chair but I think to the accredit -- there was
18 an office of accreditation.

19 Q. Is that at OSU?

20 A. At OSU in Fisher. Fisher had
21 someone who worked full-time to make sure
22 everything was accredited. So this had to be
23 approved multiple ways. And I also had to
24 submit this to -- since this was -- a portion
25 of it was licensed material, I also had to send

1 it to the supplier to make sure that they would
2 approve this as well.

3 Q. Supplier for what?

4 A. For Crucial Conversations. So the
5 course was in three different sections. So one
6 section was about crucial tools. The second
7 was around executive presence, which was a
8 hundred percent my content. And third was
9 leadership resilience, which was a hundred
10 percent my content. And the first of three
11 around the crucial tools, which was the first 7
12 of 15 weeks, that was using someone else's
13 material, but I would include my way of
14 teaching that. So I would -- and they approved
15 that I could use my own stories and, you
16 know -- and so on. But I had to use all their
17 videos.

18 Q. Regarding the Whitey Bulger
19 material --

20 A. Yeah.

21 Q. -- is that something that came from
22 this source, this creator of the Crucial
23 Conversations --

24 A. No.

25 Q. -- or was that something you

1 created?

2 A. I created --

3 Q. Okay.

4 A. -- working with the Massachusetts
5 State Police. I personally knew the state
6 police major who was responsible for
7 interrogating Whitey Bulger. So it was a true
8 life experience of what happened to him when he
9 was interrogating Whitey Bulger.

10 Q. Okay. And the -- strike that.
11 Okay. So you have this class. The class ends.
12 Did any of your students discuss with you after
13 the class ended what happened?

14 A. So I think it was a couple of days
15 later -- so I would teach the class a couple of
16 times a week. And so I think the next class, I
17 had a student that came to me and said that
18 there was a troubled, disgruntled student that
19 did not like the Whitey Bulger story and was
20 really concerned that it was inappropriate
21 behavior.

22 Q. And then who was that student?

23 A. I don't know. It was a tall
24 gentleman. He was talking about a peer student
25 that was having trouble with it and was -- and

1 he had warned me that this peer student of his
2 was recruiting -- was out to get you and was
3 recruiting other students in the class and he
4 felt very uncomfortable about that.

5 Q. Recruiting other students to do
6 what?

7 A. To join her in trying to place
8 claims about me being either a racist or being
9 inappropriately using the forum to do things
10 that were not called for, that was
11 inappropriate.

12 Q. Okay. And what did you do next,
13 after you received this verbal complaint?

14 A. I was crushed because I pour my
15 heart and soul into helping these students.
16 And in part I was shocked because the very
17 purpose of this course is to have the courage
18 to bring this kind of issue directly to the
19 person where it matters, and the person wasn't.
20 You know, so I asked, "Who was it?"

21 And he said, "You know, I'm sorry. I
22 don't think I can say that." I said, "Fine
23 but" -- so I said, Okay. Well, I'm going to
24 send a note out to the class right away. And
25 I'm going to also in the next class before we

1 start the course content material, I'm going to
2 have an open discussion to solicit any inputs,
3 thoughts or reactions, so on. And that's where
4 I proceeded with the apology document.

5 Q. And how do you communicate to your
6 classes, to the students like via an electronic
7 communication?

8 A. Yeah, so there was a mechanism set
9 up where as a professor you could -- you could
10 basically have a customized distribution
11 channel that would just go to your students.

12 Q. Do you remember what that program
13 or communication tool is called?

14 A. I think it was within Canvas.

15 - - - - -

16 (Thereupon, Deposition Exhibit 16,
17 09/28/2021 Email To varnau.6@osu.edu
18 From AU21 BUSMHR 7236/Mark Sullivan,
19 Bates Number OSU_000594, was marked
20 for purposes of identification.)

21 - - - - -

22 Q. Okay. I'm going to show you what's
23 been marked as Defendant's Exhibit 16.

24 A. Yup, yeah.

25 Q. Let me know when you're --

1 A. I'm done.

2 Q. Okay. Do you recognize Defendant's
3 Exhibit 16?

4 A. Yes.

5 Q. And what is it?

6 A. So it is a statement trying to
7 address what I was told was either one person
8 or a number -- more than one that felt that
9 there was inappropriate behavior that -- that I
10 initiated --

11 Q. Um-hum.

12 A. -- around this -- around racial,
13 ethnic slurs. I was quite taken back. And I
14 was struck with the fact that I had two -- two
15 responsibilities. One was to try to connect
16 with them personally. And, two, to teach them
17 in a more personal way how to apologize.
18 Because that was part of the teaching material,
19 was to -- and so there are three parts to that
20 which included in this was around the context;
21 and then around actions that you would take to
22 on your part, in this case, my part; and third,
23 anything in the end about how you felt. So
24 this was both a teaching document as well as I
25 was crushed that -- I mean, I cared about these

1 students and spent so many more hours beyond
2 what was in the classroom helping them. And so
3 whoever it was, I wanted them to know that.

4 Q. And just to make sure that we have
5 the timing correctly, so this message is dated
6 Tuesday, 28th of September 2021, correct? In
7 the date line.

8 A. Yeah, yeah.

9 Q. And then the first line says, "I
10 have received some heartfelt, genuine feedback
11 about me and our class on Monday."

12 So that would mean that the Whitey Bulger
13 statement occurred on September 27, 2021,
14 correct?

15 A. Probably.

16 Q. Okay. Did you get any -- strike
17 that. Have you ever had to apologize
18 previously for your Whitey Bulger material?

19 A. No, never.

20 Q. And can you kind of explain why you
21 felt the need to apologize here?

22 A. You know, I did see that this was a
23 little bit of a different class coming out of
24 Covid. And there were professors that were
25 talking about it and later Bob talked about it

1 as well; that beware, this is, you know, the
2 first semester with in person and the students
3 are acting differently and, you know, so on.
4 So I felt like perhaps I had crossed the line
5 in terms of not being -- moving too fast in the
6 teaching material and maybe scaring some people
7 more than what they were ready for. I mean, so
8 much of this was a balance between tough love
9 and affirmation.

10 I mean, so I really went out of my way
11 from an executive presence standpoint to really
12 try to affirm people in using nonverbal and
13 verbal language, which was part of the teaching
14 in this course material. And I felt like, you
15 know, maybe -- you know, no one is perfect --
16 is there something that could -- you know, did
17 I move too fast, so that -- so that's -- I'm
18 always trying to do the best I can and so
19 that's where I've come from.

20 Q. So you sent this. And I guess
21 really quick, is Defendant's Exhibit 16 a true
22 and accurate copy of your email you sent --

23 A. Yes, yeah.

24 Q. -- apologizing?

25 A. Yeah --

1 Q. Okay.

2 A. -- yeah.

3 Q. Okay.

4 A. And, by the way, I would just say
5 for the mask fully, so I -- we were coming out
6 of Covid but I was -- part of what I was
7 teaching was the power of nonverbals --

8 Q. Um-hum.

9 A. -- and I couldn't show them
10 effectively what it looks like for a supportive
11 face in the embouchure region, the mouth,
12 without taking my mask off and showing them how
13 my mouth looked when I was either smiling or
14 supporting them or whatever. So there were
15 times when I intentionally took my face mask
16 off. And I was also spending a lot of time in
17 the well, the bottom part which is furthest
18 away from this very large room of students. So
19 that was one thing.

20 And I felt that, you know, now is not
21 forever but the number one of three, the
22 mindful of language and never again make
23 reference to racist ethnic slurs. So I felt I
24 would not do that anywhere in this -- like
25 since there was more than shock probably for

1 someone in the room that I wanted to -- wanted
2 to walk that back. And I'm trying to help
3 them. This is effective teaching methods
4 that's worked everywhere all the time, but
5 there is one student that somehow -- who is not
6 coming to me, so. So that's where some of that
7 was coming from.

8 Q. Okay. A few things. First, other
9 than this Whitey Bulger snippet, did you use
10 any other racist language in your Crucial
11 Conversations course?

12 A. No.

13 Q. Okay. So that was the only racial
14 slur you used?

15 A. Yes.

16 Q. Okay. Did you use any other slurs,
17 like gender slurs or religious slurs or
18 anything like that?

19 A. Occasionally might use a comment
20 like, "Put on your big boy pants" --

21 Q. Okay.

22 A. -- as a matter of fact, I would
23 talk about stereotyping and the power of words
24 and how they can be very destructive or
25 demeaning. And so I would sometimes ask them

1 to come up with their own word list of
2 disrespectful language, and so we would even
3 have a conversation about that.

4 Q. Okay. And going back to the Covid
5 masking issue. Did Fisher or OSU issue any
6 sort of guidance to faculty on wearing masks
7 around this time?

8 A. Yeah, so it was a little bit gray.
9 I think there was a request to use masks in the
10 classroom wherever possible, but that if you
11 were like in a clinic or teaching lab that
12 sometimes there were exemptions. So I think
13 classes over at the medical division or, you
14 know, if you were teaching like suturing skills
15 in the mouth, it would be hard to -- and here,
16 with me teaching nonverbal language, I felt
17 that called for appropriate time. And people
18 were very accepting of it and learning. I
19 mean, my goal is do whatever I can do to help
20 them learn more.

21 Q. Okay. So after this apology email,
22 when was the first time you talked with one of
23 the individual defendants about the Whitey
24 Bulger incident?

25 A. So that was sometime in late

1 September or so with the -- September 22 or so
2 with Bob Lount.

3 Q. Well, September 22 would have been
4 before September 27.

5 A. So it was sometime --

6 Q. Sometime soon thereafter?

7 A. Yeah, yeah. I -- yeah.

8 Q. Okay. And did you reach out to Bob
9 or did Bob reach out to you?

10 A. He reached out to me.

11 Q. And what did he say his purpose was
12 in reaching out to you?

13 A. To check in on what's -- what's
14 actually going on in your Crucial Conversation
15 class.

16 MR. STOUFFER: Okay. All right.
17 Actually, let's take a five-minute break.

18 MR. PETROV: Okay. That's fine.

19 VIDEOGRAPHER: All right. Off the
20 record. The time is now --

21 MR. PETROV: No, I don't want to
22 go off the record. Thanks.

23 I need you to step out for a second
24 because I need to describe something on the
25 record about a document to counsel and I want

1 to do it outside side of your earshot, so
2 that --

3 VIDEOGRAPHER: Your microphone,
4 Mr. Sullivan.

5 MR. PETROV: I've lost mine, too.
6 I'll come and explain it in a second, Mark.

7 THE WITNESS: That's okay.

8 MR. PETROV: I just want to make
9 sure I'm not accused later of coaching a
10 witness or anything.

11 (Witness exits.)

12 MR. PETROV: Okay. So I wanted
13 to make a comment about Exhibit 15, Defendant's
14 Exhibit 15, which is this document, Crucial
15 Conversations Course Highlights.

16 MR. STOUFFER: Yes.

17 MR. PETROV: So when you
18 introduced it, it looked to me like a
19 privileged document that was prepared for
20 counsel. And so while you were finishing your
21 questions, I went back into my email -- and I'm
22 stating this for the record so that I can tell
23 you what the situation is and what I intend to
24 produce to you. And also get an agreement
25 that, as I try to resolve this issue, that

1 there isn't an argument that I'm otherwise
2 waiving privilege with regards to other
3 communications with Mark Sullivan. So --

4 MR. STOUFFER: Okay.

5 MR. PETROV: -- I'll say this
6 document, Exhibit 15, was forwarded to me by
7 Mr. Sullivan on July 3, 2024. And the Word
8 document that was forwarded to me was titled,
9 "Dan Petrov Crucial Conversations" -- hold on a
10 second. I'm sorry -- "Dan Petrov Crucial
11 Conversations Highlights Version 1,
12 07032024.docx."

13 My understanding -- and I haven't had a
14 chance to ask him yet, but I wanted to do this
15 before it was also clear to share my
16 recollection with you before I talk to my
17 client, it appears to me to be a privileged
18 document that was not shared with OSU. It was
19 prepared for me. It does look exactly the
20 same. My intention is to ask him and to get
21 you the original forwarded to you and also try
22 to get you a copy that has the original
23 metadata intact so that question can be
24 answered.

25 But everything I'm looking at in my

1 emails, it appears that it was a document
2 created three years -- or two years after his
3 termination and made for counsel. So I'm
4 tentatively asserting privilege over it. I
5 don't need a copy back. There's nothing
6 controversial about it, but I wanted to make
7 that clear now and tell you that I'll produce
8 it. And if there are more questions after I
9 produce that, I'll make him available for those
10 questions.

11 MR. STOUFFER: Okay. So this
12 document then was not prepared during his time
13 at Fisher then?

14 MR. PETROV: The version I have,
15 that's my understanding but I can't testify to
16 that because I don't have the metadata. But I
17 received a copy of that document that was dated
18 and labeled, July 3, 2024, with my name in the
19 file from him --

20 MR. STOUFFER: Okay.

21 MR. PETROV: -- and I'd like to
22 go back and I'd like to try to ask him
23 questions about when it was created and if he
24 has the original so that we can answer it, but
25 I wanted to talk to you before I go talk to him

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1 and then come back in the conference room after
2 a break.

3 MR. STOUFFER: I mean, if there's
4 something that he -- like this document that he
5 did prepare during his time at Fisher, we would
6 want that produced to us, because I got this
7 from the production.

8 MR. PETROV: From my production?

9 MR. STOUFFER: Yeah, from your
10 production.

11 MR. PETROV: Yeah, I think it's
12 inadvertently produced. I don't have anything
13 else with the same title in my production but I
14 will ask. And we will -- if there is something
15 else with an earlier date, I'll give that to
16 you, too --

17 MR. STOUFFER: Okay.

18 MR. PETROV: -- but based on what
19 I know now, it appears that that was a document
20 prepared for counsel and I'm going to assert
21 work product over it.

22 MR. STOUFFER: I think that's fine
23 as long as we can figure out if there's
24 something similar. Because we do think that if
25 this was -- if there's anything like this that

1 he may have [inaudible] employed by us, then we
2 think that is responsive to our discovery
3 request.

4 MR. PETROV: I would agree with
5 you, if it was made during -- all the language
6 in the document is all past tense, so. That's
7 why it caught my eye. It was, was, or, would
8 have.

9 MR. STOUFFER: I understand what
10 you're saying and that does make sense, that
11 it's privileged, so --

12 MR. PETROV: Okay.

13 MR. STOUFFER: -- so it is what it
14 is.

15 MR. PETROV: All right. Well, as
16 long as we have agreement that the issue at
17 least has been highlighted and we will resolve
18 it through further discussion. And I will go
19 back and make sure that there isn't anything
20 else responsive that was made during the time.

21 MR. STOUFFER: And if we, you know,
22 get to briefing, then we'll just abstain from
23 using that and, you know, just pretend it never
24 came into our hands.

25 MR. PETROV: All right. Well, we

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1 should be able to come to an even more clear
2 understanding of it before that point in time.
3 So I apologize for the error and the confusion,
4 but I'll get you the rest of the information
5 that you need to understand it all. Okay?

6 MR. STOUFFER: Okay.

7 VIDEOGRAPHER: We're off the
8 record. The time is now 3:19.

9 (Recess taken.)

10 VIDEOGRAPHER: We're back on the
11 record. The time is now 3:26.

12 - - - - -

13 (Thereupon, Deposition Exhibit 17,
14 09/29/2021 Email Trail Between Mark
15 Sullivan, Robert Lount and
16 Unredacted, Bates Numbers
17 OSU_002750-002752, was marked for
18 purposes of identification.)

19 - - - - -

20 BY MR. STOUFFER:

21 Q. All right. Mark, I'm going to hand
22 you what I've marked as Defendant's Exhibit 17.
23 Just let me know when you're done reviewing.

24 A. Okay.

25 Q. All right. Starting at the end of

1 Exhibit 17 with the Bates stamp OSU_002752, you
2 see the email from Robert Lount?

3 A. At the very end?

4 Q. Bottom of the email chain, but,
5 yeah.

6 A. Yeah.

7 Q. So it was sent to you on
8 September 29, 2021, correct?

9 A. Yes.

10 Q. And then Mark is asking you about
11 your use of a racial slur in class of your
12 conversation -- or your use of a racial slur in
13 class, correct?

14 A. I'm sorry. Could you repeat that?

15 Q. Yeah, sure. The first paragraph
16 states that he's emailing you about your use of
17 a racial slur in class, correct?

18 A. Yeah, yeah.

19 Q. And then at the bottom it says,
20 "Fisher's HR has asked me to talk to you about
21 the use of racial slurs in your Crucial
22 Conversations class. Can you talk via phone to
23 touch base about it today? If not today, when
24 might you have time tomorrow?" Do you see
25 that?

1 A. Yeah.

2 Q. Did you reach out to Lount by phone
3 the following day or that day?

4 A. No. We set up an appointment time
5 and he called me.

6 Q. Okay. So he called you. Was that
7 on the 29th or was that the following day?

8 A. Sometime around then.

9 Q. What did the two of you discuss?

10 A. So this was the one time that we
11 talked before the February 22 call where I was
12 being released. And he said, "I was calling to
13 just check in. HR forced me to call you." I
14 think he used the words, "Forced me to call you
15 to find out what's going on in your Crucial
16 Conversations class" --

17 Q. Okay.

18 A. -- so then I just restated that,
19 you know, that I was doing role plays and
20 simulation around some tools and that there's
21 always plus and minus reactions around role
22 play simulation. And he said -- it was a very
23 brief conversation, phone conversation. And he
24 ended by saying, "Well, that all sounds good to
25 me. Just keep going, but please note that I've

1 been hearing from a lot of professors that with
2 this being the first time back with in-person
3 classes, there's a lot of things going on with
4 students" --

5 Q. Yeah.

6 A. -- "that they're not acting the way
7 they usually do."

8 Q. What did you take that to mean?

9 A. Just to be attentive to different
10 behaviors that are coming from a different
11 environment back into a social environment --

12 Q. Okay.

13 A. -- and so to be just attentive to
14 the way they're reacting, it might be different
15 than other times. And professors were speaking
16 up at just how different it was. And you're
17 trying to do a conversation in a public space
18 and you're not getting the typical reactions,
19 so be mindful of that.

20 Q. On the first page of the exhibit,
21 which is also the latest of the emails in this
22 chain, you wrote back to Robert Lount, correct?

23 A. Right.

24 Q. And it looks like you apologize as
25 well here.

1 A. Yeah. So I was just feeling badly
2 that there was a student that was really
3 feeling badly about the way I was teaching.
4 And I was personally concerned and hurt by how
5 my teaching method was being -- how it landed.

6 Q. Okay. Did you have any -- other
7 than the phone conversation, did you have any
8 other conversations with Robert Lount
9 concerning this incident in class?

10 A. No.

11 Q. What about -- what about -- so
12 basically you didn't discuss the Whitey Bulger
13 incident with Robert Lount after the phone call
14 that occurred after this email?

15 A. Right, right.

16 Q. Did you talk to Makhiya about what
17 happened, Dean Makhiya?

18 A. So I continued to try to -- in the
19 fall of 2021, tried to get in front of Bob
20 Lount --

21 Q. Okay.

22 A. -- to find out what's going on. I
23 understand there must be some -- something
24 going on, and he would not meet with me.

25 Q. Okay. And when you say, "Not meet

1 with you," you mean Bob Lount, right?

2 A. Bob Lount.

3 Q. And what about Dean Makhija, did
4 you talk to him between this late September and
5 February 22?

6 A. I talked to him late spring of 2022
7 before leaving.

8 Q. So you didn't talk to him that
9 whole interim?

10 A. Right. I did try to get ahold of
11 HR. A number of different times I tried to get
12 in front of Bob Lount. And I felt, well, let's
13 just see how this unfolds.

14 Q. What about Ben Tepper, did you
15 contact him between late September of 2021 and
16 February of '22, when you were notified of your
17 nonrenewal?

18 A. So neither he tried to reach me nor
19 the other way around.

20 Q. Okay. Was there an investigation
21 that occurred after this incident, are you
22 aware?

23 A. I don't know what -- part of the
24 problem was they're leaving me out of whatever
25 was happening behind the curtain. So I didn't

1 know what they were doing.

2 Q. What is the Office of Institutional
3 Equity at OSU?

4 A. You know, I'm not sure what it is.
5 It's not something that I would ordinarily,
6 regularly be involved in.

7 Q. Do you know what they do?

8 A. No.

9 Q. Did you ever talk to anyone from
10 the Office of Institutional Equity, after the
11 Whitey Bulger incident?

12 A. You know, I received one call out
13 of the blue at night from someone. It may have
14 been from that office. Like I'm not familiar
15 with that office. And it was a brief call, so.

16 Q. And who was that with?

17 A. I'm not sure who.

18 Q. What did you discuss?

19 A. So I remember it was a female
20 voice. And the person was saying that they
21 were calling to just check in on your Crucial
22 Conversations class. And I said, "Who are
23 you?" And what is -- and it was mostly a
24 one-sided conversation. I just shared -- so I
25 first asked a little bit about, what do you do,

1 and she basically said something to the
2 effect -- it was a short call, but it was
3 something to the effect of, I do quality
4 assurance for people's rights in different
5 perspectives and so on.

6 Q. Do you remember roughly when this
7 took place, this call?

8 A. I think it was sometime in the fall
9 of 2021.

10 Q. Do you know the month it took
11 place?

12 A. No.

13 Q. Okay. What did they tell you at
14 the end of the call? Did they tell you what
15 next steps would be or anything like that?

16 A. They just said, Well, I am sure
17 that your school administration and HR will be
18 in touch with you, if there's any concerns or
19 issues that need to be further discussed.

20 Q. Do you remember -- does the name
21 Courtney Johnson ring a bell?

22 A. Very vague. Was that the person
23 from Institutional -- from this Institutional
24 Equity?

25 Q. I can't answer your question.

1 MR. PETROV: Yeah, just answer to
2 the best of your recollection.

3 A. Yeah, I don't know.

4 Q. Okay. Do you remember having a
5 conversation with a woman in and around
6 January 19, 2022, about the Whitey Bulger
7 incident?

8 A. I remember having a conversation
9 with -- I think it was a woman, this call, but
10 I really don't know about the timetable.

11 Q. So there was only one time you
12 talked to her?

13 A. Yes.

14 Q. Okay. And was there any sort of
15 communication during this call -- or, I'm
16 sorry. Strike that. During this call with
17 this woman from OIE, was there any indication
18 that disciplinary action would be taken against
19 you?

20 A. Not that I know of.

21 Q. So there was no discussion for any
22 sort of disciplinary or some sort of negative
23 consequences for your use of the, "N," word in
24 class the prior --

25 A. Yeah, no.

1 Q. Okay. Please have Exhibit 8 out
2 and just have it handy to flip through.

3 MR. PETROV: That's the
4 complaint. (Hanging.)

5 THE WITNESS: Thank you.

6 - - - - -

7 (Thereupon, Deposition Exhibit 18,
8 Plaintiff's Responses To Defendants'
9 First Set of Interrogatories and
10 Requests For Production of Documents
11 To Plaintiff, was marked for
12 purposes of identification.)

13 - - - - -

14 BY MR. STOUFFER:

15 Q. I'm going to give you what's been
16 marked Defendant's Exhibit 18. Okay. Do you
17 recall receiving and answering defendants'
18 interrogatories issued to you?

19 A. Yes.

20 Q. And you took your time to consider
21 your response and assure the responses are
22 truthful?

23 A. Yes.

24 Q. All right. Can you go to page 6 of
25 Exhibit 18 and please read both the

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1 interrogatory and response to interrogatory 5.

2 A. "Set forth all facts upon which
3 Plaintiff bases his allegations in Paragraph 41
4 of the Complaint including subparts A
5 through C."

6 "Answer: Objection. The interrogatory
7 is vague, overbroad, compound" --

8 Q. And you can -- I'm sorry. You can
9 read it quietly.

10 A. Oh, I'm sorry.

11 Q. I apologize.

12 A. Yeah.

13 Okay.

14 Q. All right. And then as to the
15 complaint, can you go to page ID 228, which is
16 on page 8 of Exhibit 8.

17 MR. PETROV: The other exhibit.
18 He's asking you to turn to page 8 of this
19 document. (Indicating.)

20 THE WITNESS: Thank you.

21 Q. And then paragraph 41.

22 A. Okay.

23 Q. Okay. So I want to ask -- I'm
24 going to go one by one. For William
25 Wattercutter, what facts do you know that you

1 base your allegation in paragraph 41, that
2 Mr. Wattercutter knew or should have known that
3 they were violating your Constitutional and
4 contractual rights by subjecting you to an
5 investigation?

6 A. It was common understanding that in
7 an academic environment such as this where
8 there were 200 faculty members, we would talk
9 about the freedom of expression, you know. I
10 mean, that was something that was just in the
11 air, that we had the -- that these were our
12 classes. We had the right to be able to teach
13 and practice the way we felt best. And I think
14 as an HR person who was walking the hallways,
15 he should be aware of that.

16 Q. Is there any conversation or a
17 document that you have personal knowledge of
18 that shows that Mr. Wattercutter was involved
19 with or knew about your investigation -- the
20 investigation into the Whitey Bulger incident?

21 A. There was -- his name was on a
22 list, you know, that -- can I ask --

23 Q. No.

24 MR. PETROV: No. Just answer to
25 the best of your ability.

1 A. Yeah, it was on a list that I saw.

2 Q. Is that the internal document you
3 asked about or talked --

4 A. I think so, yeah.

5 Q. Okay. And that's the internal
6 document you couldn't answer, "Yes," or, "No"
7 where you had seen it?

8 A. Correct.

9 Q. Okay. Regarding Jennifer McLendon,
10 same question. What makes you believe that she
11 should have -- she knew or should have known
12 that she was violating your Constitutional
13 rights by subjecting you to an investigation?

14 A. Same answer.

15 Q. The internal document?

16 A. Well, that she should have known
17 about my Constitutional right, that it was
18 something that was discussed amongst faculty
19 all over the place and --

20 Q. How do you know that Jennifer
21 McLendon -- because I'm not asking about other
22 faculty. I'm asking about one of the
23 individual defendants you sued. What specific
24 facts tie Jennifer McLendon to, A, knowing that
25 your Constitutional rights were being violated

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1 by having you investigated for the Whitey
2 Bulger incident?

3 MR. PETROV: Objection to form.
4 You can answer if you know what's being
5 asked.

6 THE WITNESS: I don't care to.

7 MR. PETROV: No. If you're able
8 to answer the question, you can. And if you
9 can't answer the question you can't --

10 THE WITNESS: Okay.

11 MR. PETROV: -- but your desire
12 to is irrelevant.

13 THE WITNESS: Okay. Thank you,
14 sir.

15 MR. PETROV: Sure.

16 BY MR. STOUFFER:

17 A. So I felt that as -- so I'm someone
18 that has managed HR functions in industry for
19 years. And then I taught HR there at the
20 school. And I taught best practices. And it
21 was my belief that HR professionals should know
22 what our rights are and that -- that would be
23 like common -- common table stakes.

24 Q. Okay. Well, let me ask this then:
25 Does Jennifer McLendon or William Wattercutter

1 work for OIE?

2 A. I'm not sure what their -- what the
3 organizational structure is in terms of
4 reporting relationships.

5 Q. In terms of Anil Makhija, does he
6 work in OIE at OSU?

7 A. I don't think so.

8 Q. What about Robert Lount, does he
9 work in OIE?

10 A. I don't think so, but what I'm --

11 MR. PETROV: Just --

12 THE WITNESS: Okay.

13 Q. What about Robert Lount? Or, I'm
14 sorry.

15 A. Ben Tepper?

16 Q. Ben Tepper?

17 A. Yeah, I don't think so.

18 Q. Okay. Do you personally know any
19 facts that tie the five individual defendants
20 to the decision to investigate you for the
21 Whitey Bulger incident by OIE?

22 A. Well, I was told three times by --
23 so by Bob Lount, Ben Tepper and Anil Makhija --

24 Q. When?

25 A. -- that --

1 Well --

2 Q. Sorry.

3 A. -- in September and in February and
4 in May that I was being fired because -- or
5 released because of my teaching practice in the
6 classroom.

7 Q. Now, you just listed September.
8 September of '21, you were told you were going
9 to be terminated?

10 A. Well, it -- well, actually, he was
11 introducing the topic. And then in February,
12 he actually said that I was being -- I was
13 losing my job.

14 Q. What do you mean by, "Introducing
15 the topic"?

16 A. Well, he called to say, "What is
17 going on? HR has forced me to call you to find
18 out what -- get a status check on what's going
19 on in your class."

20 Q. We saw the email previously --

21 A. Yeah.

22 Q. -- where Lount reached out to you
23 to ask you about the incident, the Whitey
24 Bulger incident. Is there anywhere in that
25 email that you saw that he threatened you with

1 discipline or termination over the incident?

2 A. So he would not meet with me for
3 many months and that signalled something.
4 How --

5 Q. But didn't you say earlier in your
6 deposition today that Robert Lount had
7 historically avoided you even before this
8 incident?

9 A. He was someone that didn't care for
10 being around me but, I mean, that was just, you
11 know, unrelated to the fact that -- that this
12 whole incident came up. But he would not meet
13 with me to deal -- to address any questions I
14 had about this.

15 Q. Okay. I'm going to move on to
16 subsection B. Of the five individuals that
17 you're suing, was there ever an instance where
18 they told you, You cannot use racial slurs as
19 part of your classroom curriculum and your
20 speech in class?

21 A. No.

22 Q. So they never said that, Oh, you
23 can't use the, "N," word in class when you're
24 teaching Crucial Conversations?

25 A. No. And they chose not to say all

1 kinds of things because they never gave me
2 feedback.

3 Q. Okay. And then for subsection C,
4 terminating your employment, based on the
5 Crucial Conversations Whitey Bulger material;
6 when you were notified of your contract
7 nonrenewal and when you discussed it with
8 Tepper, Lount and Makhija, did they ever tell
9 you that, We are doing this because of your
10 Whitey Bulger speech?

11 MR. PETROV: Asked and answered.

12 But go ahead, Mark. You can answer the
13 question.

14 A. They told me because of my teaching
15 practice, that I was being let go because of my
16 Crucial Conversations teaching methods and
17 practices.

18 Q. And who said that?

19 A. So all three. In different ways,
20 they all said that.

21 Q. When you say, "Different ways,"
22 what do you mean by that? And let's go through
23 each case. So Lount, "Different ways," what do
24 you mean?

25 A. So he said, "Your -- the teaching

1 practice in your Crucial Conversation class was
2 something that was under review with HR and it
3 was a real problem and you need to talk to them
4 to get more detail about it."

5 With --

6 Q. And that was in February of '22?

7 A. Yes.

8 Q. And now let's go to Ben Tepper.
9 When did he say anything that indicated that
10 your nonrenewal was linked to the Whitey Bulger
11 material?

12 A. In May of 2022, he told me that he
13 was sorry that I was charged with this kind of
14 student interaction and that a similar thing
15 had happened to him. And I'm -- and when I
16 said, "Well, what did you do?" And he said,
17 "Well, this happened to me as well." And I
18 think he meant recently that a student had
19 charged him with something. And he said, "I
20 went -- I felt humiliated. I was not going to
21 be" -- so he said, "I needed to go to
22 leadership and get this taken care of
23 immediately." And since he was in leadership,
24 I thought that was really interesting, but he
25 wouldn't stand for me, you know, so that was --

1 Q. That's all he said on -- that's
2 what you meant by, In so many ways, with regard
3 to Ben Tepper?

4 MR. PETROV: Object to form.

5 But go ahead, Mark.

6 A. Yeah, so his main point was, you
7 got let go because of your teaching practice in
8 your Crucial class. So that was the main point
9 he was making, even though he apologize -- he
10 said, "I'm sorry that this happened to you." I
11 mean, we had been friends and became good
12 colleagues and so he was feeling badly for it.
13 And he said, "The same thing happened to me in
14 my class. I ran into a problem with a
15 student."

16 Q. Regarding Bill Wattercutter and
17 Jennifer McLendon, what specific facts do you
18 know -- personally know that they terminated
19 your employment based on your conduct in the
20 Crucial Conversations course and the Bulger
21 content?

22 A. So with Bill Wattercutter, it was
23 simply -- it was very little. It was, You
24 know, Mark, I'm not in a position to go into
25 detail about this, but you're, you know, under

1 review for your teaching practice and what's
2 going on there.

3 Q. And when was that statement made?

4 A. You know, I think that was -- I
5 think sometime in the spring --

6 Q. Okay.

7 A. -- yeah, but I can't say -- I don't
8 know when.

9 Q. Are you aware if Bill Wattercutter
10 has the authority to not renew senior lecturer
11 contracts on his own?

12 A. Yeah, I don't think he does. I
13 think he's more of an influencer than a
14 decisionmaker.

15 Q. And what do you mean by that?

16 A. So he could influence. He could
17 make recommendations. He could share
18 information, but he couldn't make an up or down
19 decision.

20 Q. Have you seen any document or had
21 any conversation that would reflect that he
22 played that kind of role in your nonrenewal?

23 A. No specific document but he did --
24 you know, he -- I think he was on a list of
25 people that was reviewing or seeing things.

1 Q. The internal document?

2 A. Yeah.

3 Q. What about Jennifer McLendon? Same
4 question. What specific information do you
5 have that she made the decision to terminate
6 you for the material in your Crucial
7 Conversations course?

8 A. Similar answer. I believe there's
9 not much more to add to what Bill, William had
10 to say.

11 Q. Okay. Let's go to interrogatory 6
12 in Exhibit 18. And when it comes to Exhibit 8,
13 we're going to refer to paragraph 45.

14 A. I'm sorry. What page?

15 Q. I apologize. So in Exhibit 18, the
16 interrogatories, please go to number 6. And
17 then when it comes to the complaint, Exhibit 8,
18 please go to paragraph 45.

19 A. (Witness complies.)

20 Q. And I'm going to read paragraph 45.
21 So this is under the, First cause of action,
22 first amended retaliation under 42 USC,
23 section 1983. Paragraph 45: "By punishing and
24 terminating Plaintiff for expressing his views
25 in his academic speech and educational course

1 content, Defendants have retaliated against
2 Plaintiff for exercising his First Amendment
3 rights."

4 Interrogatory 6 asked, "Set forth all
5 facts upon which Plaintiff bases his allegation
6 in Paragraph 45 of the Complaint that," and
7 then that, By punishing and terminating
8 Plaintiff for expressing his views, and it goes
9 on to quote paragraph 45.

10 So is this -- so regarding number 45, are
11 your responses to what we just went through,
12 which was interrogatory 5 relating to
13 paragraph 41, subparts A through C, are your
14 responses going to be the same regarding your
15 response to interrogatory 6?

16 MR. PETROV: I'm sorry. I don't
17 know what that question is.

18 MR. STOUFFER: Okay. I'll
19 rephrase.

20 Q. I'm saying: In terms of the facts
21 that you would use or cite in support of your
22 paragraph 45, would it simply be the same
23 information you just shared with us in response
24 to interrogatory 5 and us going through
25 paragraph 41?

1 MR. PETROV: Objection to form.

2 But you can answer to the best of your
3 ability.

4 A. So all I know is that we -- in an
5 educational environment like that that it was
6 made public in all sorts of forums of what our
7 rights were. I mean, this is not a shy crowd,
8 a bunch of professors talking about what their
9 rights are. And, you know, any good HR person,
10 you know, any administrator would have heard or
11 been aware of concerns about freedom --
12 academic freedom and rights thereof, so --

13 Q. Okay.

14 A. -- I mean, in staff meetings, in
15 compensation review committees, in all kinds
16 of -- it just would flow through the work of
17 doing the business of running a school that --

18 Q. Okay. So what specific facts do
19 you base paragraph 45 in your complaint
20 regarding William Wattercutter? And this is
21 specific facts that you have personal knowledge
22 of.

23 A. So I thought you asked me this
24 question before.

25 MR. PETROV: Just note my objection

1 because he didn't prepare the complaint and it
2 calls for legal conclusions.

3 But with that, you can do the best you
4 can, Mark, to answer the question.

5 Q. And so to save us time, that's why
6 I asked if your responses to this interrogatory
7 for each individual would be the same --

8 A. Oh, okay.

9 Q. -- as we went through with
10 number 41, A through B.

11 A. Yes.

12 Q. All right. We're going to go on to
13 interrogatory 7. This asks you, "Identify and
14 describe specifically what speech or viewpoints
15 Plaintiff believes he is either being
16 retaliated against and/or discriminated against
17 by Defendants. Include a description of the
18 time and content, form and context of the
19 speech and/or viewpoints Plaintiff contends he
20 is being retaliated against and/or
21 discriminated against by Defendants."

22 So let's go one by one. Or, strike that.
23 What is the speech that you believe you're
24 being retaliated against for?

25 A. For how I was teaching in the

1 class.

2 Q. Anything else?

3 A. That's a lot. That I was -- I lost
4 my job based on how I was trying to help others
5 learn in this -- in this topic and the way that
6 I was doing it was why I was -- lost my job.

7 Q. And what speech specifically do
8 you --

9 A. Well, the Whitey Bulger -- sorry.

10 Q. -- do you contend that you were
11 retaliated against and/or discriminated against
12 by the individual defendants?

13 A. So the Whitey Bulger is -- is the
14 speech in particular that I would say as an
15 example.

16 Q. Is that the only speech you believe
17 that you were discriminated or retaliated
18 against for?

19 A. No. I mean, there's other
20 examples. So this student or whoever the
21 student maybe had recruited were
22 inappropriately challenging me on my executive
23 presence, the content material, which is how to
24 respectfully touch with someone to show
25 affirmation or support. You know, just

1 multiple ways and times. You know, I found
2 that to be really not only them crossing the
3 line but also very offensive, that I would be
4 that kind of a person. I mean, that was really
5 humiliating and insulting as just a
6 hardworking, honest, Catholic person that I
7 would be -- it'd be like character defamation.

8 Q. So I need to clarify because -- so
9 other than the Whitey Bulger speech, what other
10 speech are you contending you were --

11 A. So nonverbal speech --

12 Q. Hold on.

13 A. Okay.

14 Q. -- what other speech other than the
15 Whitey Bulger speech do you contend you were
16 discriminated or retaliated against by the
17 individual defendants?

18 MR. PETROV: Okay. Objection,
19 asked and answered.

20 You can go ahead and answer the question
21 again.

22 A. Nonverbal speech.

23 Q. Nonverbal speech. Okay. All
24 right. Let's go on to interrogatory 8. We
25 asked you to identify all individuals whom you

1 contend defendants treated better than you and
2 describe with specificity each occasion on
3 which he or she received better treatment.
4 There was an objection.

5 And then the answer provided states, "Ben
6 Tepper." Do you see that?

7 A. Where? Is that on page 7?

8 Q. Interrogatory 8. That's page 7.

9 MR. PETROV: (Indicating.)

10 A. Okay. Great. Thank you.

11 Q. And then there's the answer with
12 the objection. And then you write below the
13 objection, "Ben Tepper."

14 A. Yes.

15 Q. So can you kind of -- can I ask
16 you, on what basis have you identified Bennett
17 Tepper as being treated better than you?

18 A. When he revealed that he had a
19 similar challenge with a student in a class he
20 was teaching and he wasn't fired, he had -- he
21 said he went and had to fix this right away
22 with leadership. So I thought, wow, same thing
23 happens to me. I don't get anyone trying to
24 fix it for me, but because he's a senior
25 associate dean, he has connections. He can go

1 to his peers and get this fixed right away, but
2 I can't even get my own boss to answer a phone
3 call or to open his office door even though
4 he's right behind it to have a sit-down
5 conversation. I can't get him or a student
6 that's in this class to -- we can't sit and
7 talk through this.

8 Q. Okay. And so do you remember the
9 substance of the complaint that Bennett Tepper
10 was allegedly subjected to -- or the subject
11 of?

12 A. Yeah, so it -- what I was struck
13 with was how much he was mirroring my
14 experience with his experience, that he had a
15 student in his class that was having -- that
16 was challenging him in how he was teaching.

17 Q. Did he ever convey to you that this
18 student had complained of anything involving
19 racial slurs?

20 A. He didn't specify in terms of what
21 exactly were the words, but he said, "Like you,
22 Mark, I had a student that was also challenging
23 how I was teaching to the extent that the
24 student wanted to get me fired. I had to fix
25 that right away."

1 Q. And is that the extent of your
2 knowledge of this student complaint --

3 A. Yes.

4 Q. -- against Tepper?

5 A. Yes.

6 Q. All right. So you separated from
7 employment from OSU in May of 2022, correct?

8 A. Yes.

9 Q. Can you describe what attempts you
10 made at finding similar or superior employment
11 to what you had at OSU?

12 A. So I have reached out to a number
13 of -- so I've done a number of things. So one
14 thing is, I have reached out to different
15 educational -- higher ed institutions of
16 learning around executive ed. I've been hired
17 as a contractor at Case to work once and I
18 will -- I'm under contract to teach a course --
19 it's a workshop in their executive ed program
20 at Weatherhead Management School.

21 I've applied to other schools in the
22 executive ed arena. I've started my own
23 business, which is taking some time to do the
24 startup and the build-out and I'll be launching
25 sometime in the near term. So those are all

1 things I'm doing. I'm doing executive
2 coaching. I'm just starting with that, so I
3 have a -- I have one gentleman in Cleveland.
4 And I'm meeting someone in Columbus to
5 potentially -- potentially have a twelve-week
6 engagement with him.

7 Q. Okay. So the jobs you're applying
8 for at Case and other universities, are these
9 also similar --

10 A. Yeah --

11 Q. -- professor positions?

12 A. -- yeah. Well, they're contractor
13 programs -- contractor work in executive ed,
14 which is really a little different than -- so
15 it is -- it is focused more towards an older
16 population, folks like people in this room that
17 are professionals and looking at more
18 adopting -- learning about some refined skills.

19 Q. Okay. And then you kind of -- I
20 just want to ask you about some wording you
21 just used. So your consulting firm, has it
22 officially launched as of now or is it still
23 in --

24 A. It's in development.

25 Q. It's in development. Is it

1 currently generating any sort of revenue
2 streams?

3 A. So I have one executive coaching
4 gig. It's going to -- what the Performance
5 Learning Academy, my business that I'll be
6 launching in the near term will focus on is
7 executive coaching, on speaker engagements and
8 a speaker lab.

9 Q. I understand there are many plans,
10 but it sounds like there is at least some
11 current as of today revenue stream or streams.

12 A. Right.

13 Q. Okay. And then do you have an
14 approximation of how much money you are making
15 now given your activities as compared to when
16 you worked at OSU?

17 A. You know, I'm just making a couple
18 hundred bucks here and there as opposed to the
19 kind of income stream that was permanent and
20 stable under OSU.

21 Q. Have you spoken with anyone at the
22 university or Fisher College of Business about
23 your lawsuit or your claims since leaving?

24 A. No, no.

25 Q. Okay. I forget which one it was.

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1 Are you seeking any emotional distress damages
2 as part of the remedies that you are seeking in
3 this action?

4 MR. PETROV: He is, but I'm
5 answering just because that calls for knowledge
6 of the law and by extension for a legal
7 conclusion.

8 But you can answer your experience, if
9 you'd like to weigh in, too, Mark.

10 A. Yes.

11 Q. Okay. I'm looking at the top of
12 page 8 of Defendant's Exhibit 8. It's part of
13 the response -- your answer and objections to
14 defendants interrogatory 9. It says, "Subject
15 to and without waiving any objection, Plaintiff
16 suffered garden variety emotional distress,
17 emotional harm and damages as a result of
18 Defendants' conduct." I just kind of want to
19 explore that a bit.

20 How would you describe your -- how would
21 you describe your garden variety emotional
22 distress since being separated?

23 MR. PETROV: You're looking at
24 the wrong document.

25 Just give him one second to catch up.

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1 MR. STOUFFER: Yeah, that's fine.

2 MR. PETROV: That document,
3 page 8 at the top.

4 MR. STOUFFER: At the top, yeah.

5 MR. PETROV: What counsel just
6 read was this sentence here, "Subject to and
7 without waiving," so you can catch up there.
8 (Indicating.)

9 THE WITNESS: Yeah.

10 MR. STOUFFER: Thank you.

11 THE WITNESS: Thank you.

12 BY MR. STOUFFER:

13 A. So as a psychologist, I've been
14 trained and aware of different levels and types
15 of emotional conditions. I would say simply in
16 everyday language, you know, I've been anxious.
17 I have a family of three young men, sons that
18 I'm proud of that -- and a good wife that this
19 has been a real burden.

20 I feel that I am blessed with a lot of
21 good people, my family included, and we have
22 suffered and had to sell -- with loss of income
23 and circumstances, had to sell a house in
24 Columbus, move from our family and friends in
25 Columbus to this town here, which is, you know,

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1 a nice town but there was, you know, the burden
2 of relocation and the worry about how I would
3 pay bills, you know, has been tremendously
4 burdensome.

5 Q. Have you been unable to engage in
6 income generating activities due to the
7 emotional affects of your separation from
8 employment?

9 A. No.

10 MR. STOUFFER: Let's take a
11 ten-minute break. I am pretty close to done.

12 THE WITNESS: Okay.

13 I should say, I still get a lot of
14 students calling me and I'm guiding and
15 coaching them. I have a lot of texts and
16 emails and so on of students that have found
17 out how to reach me, so I'm helping them versus
18 the other way around.

19 MR. STOUFFER: Okay. Well, thank
20 you.

21 MR. PETROV: All right.

22 VIDEOGRAPHER: Off the record. The
23 time is now 4:16.

24 (Recess taken.)

25 VIDEOGRAPHER: We're back on the

1 record. The time is now 4:29.

2 BY MR. STOUFFER:

3 Q. Okay. I would like to go back to
4 page 6 of Defendant's Exhibit 18.

5 MR. PETROV: All right. Hold on.
6 I'll give it to him. I took it all away.

7 Okay. There's Exhibit 18. (Handing.)

8 Q. And page 6. I just have one
9 question, and this is in reference to number 5.
10 So do you recall we were discussing about how
11 Lount, Tepper and Makhija, I think the phrasing
12 was, quote, In so many ways, unquote, said that
13 your separation from employment was motivated
14 by your academic speech, I forgot to ask about
15 Makhija. What did Dean Makhija say that made
16 you believe that your separation from
17 employment was caused by your academic speech?

18 A. When he said to me that, "There was
19 some investigative efforts into your teaching
20 practice in Crucial Conversations," and I asked
21 for more detail and he said, "You'd have to
22 speak to HR" --

23 Q. Okay.

24 A. -- so given his title and position,
25 I just -- I felt like he -- that was probably

1 the best answer he could give from his
2 standpoint but I think he could have said more.

3 Q. And was that the conversation you
4 had with him in and around, was that May
5 of 2022?

6 A. Yes.

7 Q. Okay. Did he say anything else,
8 other than that?

9 A. Yeah. He -- I asked him if he
10 could help me, that I had always helped the
11 school out for all these years. Whenever you
12 needed extra -- extra courses taught, I went
13 out of my way and I thought, I would really
14 appreciate it if you could look into this and
15 help me out in whatever way would be possible.

16 Q. Okay. And then I asked you before
17 a break about your applications for equivalent
18 or --

19 A. Yeah.

20 Q. -- superior employment. Do you
21 know approximately how many applications you
22 submitted?

23 A. So, you know, I would say over time
24 it's been a couple of dozen, a number of
25 different places.

1 Q. Have you been given any offers from
2 those applications?

3 A. There's interest. Like the
4 University of Michigan is -- verbally there's
5 been some interest.

6 Q. But has there been any offers of
7 employment from any of the applications --

8 A. So Case has offered, you know,
9 contract work.

10 Q. And is that for a professor
11 position or --

12 A. For executive ed.

13 Q. Executive ed?

14 A. Right.

15 Q. What about any sort of teaching or
16 education positions for like an equivalent of a
17 senior lecturer at a different institution,
18 have you applied for any positions like that?

19 A. No. I've been applying for
20 executive ed. It's more money with less time
21 and it's also what I'm known for.

22 Q. Okay. So you haven't applied to
23 any sort of like lecturer positions at other
24 universities?

25 A. Right --

1 Q. Okay.

2 A. -- but I consider this to be
3 even -- executive ed is considered top of the
4 teaching mountain, if you will, or hierarchy
5 that -- you know, that it's considered an honor
6 and it's significantly more pay and
7 opportunity.

8 Q. Have you received any rejections
9 for positions you applied to?

10 A. Not yet.

11 Q. Okay. Other than the five named
12 individual defendants, are you aware of anyone
13 else at the university or Fisher College of
14 Business who you believe has violated your
15 right to academic free speech under the First
16 Amendment?

17 A. Not at this time.

18 Q. So at this time you're not aware of
19 anyone who has -- anyone outside of the five
20 individual defendants that you believe have
21 violated your right to academic free speech?

22 A. Not at this time.

23 MR. STOUFFER: Okay. I think we're
24 done.

25 MR. PETROV: Okay.

1 EXAMINATION OF MARK SULLIVAN

2 BY MR. PETROV:

3 Q. I have like probably less than 120
4 seconds. So, Mark, I'm going to give you what
5 had been introduced to you as Defendant's
6 Exhibit 6, which is the February 2022
7 termination letter, right? Is that right?

8 A. Yes.

9 Q. Okay. And that's addressed to you
10 from Mr. Makhija, correct?

11 A. Yes.

12 Q. And can you read the cc line? Who
13 are the people who received cc's?

14 A. Professor Robert Lount, Professor
15 Bennett Tepper and Jennifer McLendon.

16 Q. And this is the letter that you
17 received informing you of your termination of
18 employment?

19 A. Yes.

20 Q. And you saw all four of those
21 people either authoring or cc'd on the
22 document?

23 A. Yes.

24 Q. And did you, from seeing their
25 names on this document, conclude that they had

1 involvement with the decision to terminate your
2 employment?

3 A. Yes.

4 Q. And your earlier testimony about
5 internal documents, is this the same or similar
6 to what you described as an internal document
7 showing the involvement of those people?

8 A. Yes.

9 Q. Okay. That's all I have on that.
10 Defendant's Exhibit 10 is your annual
11 revenue from Bob Lount in April of 2020.

12 A. Yes.

13 Q. And Mr. Stouffer asked you some
14 questions relating to some SEI scores in your
15 courses --

16 A. Yes.

17 Q. -- do you remember talking about
18 that topic?

19 A. Yes.

20 Q. Did this review also contain an
21 overall scholarly rating?

22 A. Yes.

23 Q. And what was that for the 2020
24 review? It's the first sentence under the
25 bold, point evaluation. What did you receive?

1 A. SB, substantially beyond.

2 Q. And did you understand that to be
3 the top rating you could receive as a professor
4 from Mr. Lount?

5 A. Yes.

6 Q. And is the fact that you got a
7 substantially beyond rating, did that
8 contribute to your decision to not contest in
9 writing the SEI scores you received from your
10 class?

11 A. Yes.

12 Q. Okay. And lastly -- you can put
13 that down. And lastly, I'll give you
14 Defendant's Exhibit 11, which is the same
15 format of annual review you received in 2021
16 from Mr. Lount. You see this follows a very
17 similar format to Exhibit 10, right?

18 A. Yes, yes.

19 Q. On page 2, there's a paragraph
20 titled, "Evaluation."

21 A. Yes.

22 Q. What was the evaluation you
23 received from Mr. Lount in April of '21?

24 A. Meets or beyond.

25 Q. And then looking at the first page,

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1 did you understand that to mean that Mr. Lount
2 believed your performance either met or was
3 beyond his expectations?

4 A. Yes.

5 Q. And did receiving that review from
6 Mr. Lount in April of 2021, contribute to your
7 decision to not contest in writing the SEI
8 scores that you received?

9 A. Yes.

10 MR. PETROV: Okay. I have no other
11 questions.

12 EXAMINATION OF MARK SULLIVAN
13 BY MR. STOUFFER:

14 Q. Just one question. Going back to
15 Defendant's Exhibit 6 -- I believe it's this
16 one -- under the, cc line, do you see William
17 Wattercutter's name there?

18 A. No.

19 MR. STOUFFER: Okay. And that's it.

20 MR. PETROV: Okay. We'll read.

21 VIDEOGRAPHER: We're off the record.
22 The time is now 4:38.

23 (Thereupon, the deposition
24 was adjourned at 4:38 p.m.)
25

1 Whereupon, counsel was requested to give
2 instruction regarding the witness's review of
3 the transcript pursuant to the Civil Rules.

4
5 SIGNATURE:

6 Transcript review was requested pursuant to the
7 applicable Rules of Civil Procedure.

8
9 TRANSCRIPT DELIVERY:

10 Counsel was requested to give instruction
11 regarding delivery date of transcript.
12 David B. Stouffer ordered the original
13 transcript regular delivery.

REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

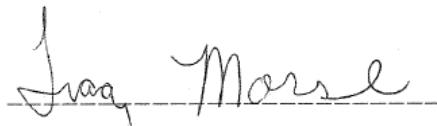
I, Tracy Morse, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, MARK SULLIVAN, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

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1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 15th day of
8 April, 2025.

9
10
11
12 

13 -----
14 Tracy Morse, Notary Public
15 within and for the State of Ohio

16
17 My commission expires 1/26/2028.
18
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April 15th, 2025

To: DANIEL P. PETROV, ESQ.

Case Name: Sullivan, Mark v. Makhija, Anil Et Al

Veritext Reference Number: 7279726

Witness: Dr. Mark Sullivan Deposition Date: 4/1/2025

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7279726

CASE NAME: Sullivan, Mark v. Makhija, Anil Et Al

DATE OF DEPOSITION: 4/1/2025

WITNESS' NAME: Dr. Mark Sullivan

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date Dr. Mark Sullivan

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7279726

CASE NAME: Sullivan, Mark v. Makhija, Anil Et Al

DATE OF DEPOSITION: 4/1/2025

WITNESS' NAME: Dr. Mark Sullivan

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Dr. Mark Sullivan

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn

Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 7279726

PAGE/LINE(S) / CHANGE /REASON

Date Dr. Mark Sullivan
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

Notary Public

Commission Expiration Date

[& - 19]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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